Vol 31. 78. Aug 8. N. H. Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 307

ISAAC L. LYON, APPELLANT,

vs.

JESUS HERNANDEZ AND KATHARINE HERNANDEZ.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED NOVEMBER 9, 1875.

SUPREME COURT OF THE UNITED STATES.

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a UNITED STATES OF AMERICA:

In the United States circuit court, 5th circuit, western district of Texas, sitting at Austin.

ISAAC L. LYON, APPELLANT,
vs.
JESUS HERNANDEZ & KATHARINE HERNANDEZ, appellees.

The President of the United States to Jesus Hernandez and Katharine Hernandez or their attorneys of record, Jacob Waelder or William M. Walton:

You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at Washington on the second Monday of October next, to show cause, if any there be, why the decree rendered in your favor by the circuit court of the United States, sitting in chancery at Austin, in said district, in a certain cause depending between Jesus Hernandez & Katharine Hernandez, as complainants, and Isaac L. Lyon, defendant, numbered 70 on the chancery docket of said court at Austin, should not be reversed and speedy justice be done to the parties in that behalf, in pursuance of an appeal obtained by the said Isaac L. Lyon, the said defendant, according to his petition filed in the circuit court of the United States for the western district of Texas, at Austin.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States and the seal of our said circuit court, at Austin, this 28 day of September, A. D. 1875.

[SEAL.]

T. H. DUVAL,
U. S. Judge.

Test with seal of court.

M. HOPKINS, *Clk.*

(Indorsed:) No. 70. In equity. Isaac L. Lyon, appellant, vs. Jesus Hernandez & Katharine Hernandez, appellees. Citation in appeal issued 28 Sept., 1875. M. Hopkins, cl'k.

Came to hand Sept. 28th, 1875. Executed Sept. 29th, 1875, by delivering to W. M. Walton, one of the attorneys of record named within, in person, a true copy of this citation of appeal.

T. F. PURNELL,
U. S. Marshal,
Per H. P. PURNELL, *Dep.*

1 ISAAC L. LYON, APPELLANT,
vs.
JESUS & KATHARINE HERNANDEZ, APPELLEES.

In circuit court of the United States, 5th circuit, in and for the western district of Texas, sitting at Austin. In chancery.

JESUS AND KATHARINE HERNANDEZ, complainants,
vs.
ISAAC L. LYON, DEFENDANT.
No. 70.

2 UNITED STATES OF AMERICA:

Circuit court of the United States, 5th circuit, in and for the western district of Texas, at Austin.

Be it remembered that at a term of the circuit court of the United

a UNITED STATES OF AMERICA:

In the United States circuit court, 5th circuit, western district of Texas, sitting at Austin.

ISAAC L. LYON, APPELLANT,
vs.
JESUS HERNANDEZ & KATHARINE HERNANDEZ, appellees.

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Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States and the seal of our said circuit court, at Austin, this 28 day of September, A. D. 1875.

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T. H. DUVAL,
U. S. Judge.

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JESUS AND KATHARINE HERNANDEZ, complainants,
vs.
ISAAC L. LYON, DEFENDANT.
No. 70.

2 UNITED STATES OF AMERICA:

Circuit court of the United States, 5th circuit, in and for the western district of Texas, at Austin.

Be it remembered that at a term of the circuit court of the United

States, 5th circuit, in and for the western district of Texas, at Austin, sitting for the January term, A. D. 1875—Hon. W. B. Woods, circuit judge; Hon. Thomas H. Duval, district judge; Hon. W. B. Woods presiding—

Among other, the following proceedings were had, to wit:

Bill of complaint, endorsed "Filed July 8, 1873. M. Hopkins, clk."

In equity.

To the honorable the judges of the circuit court of the United States within and for the western district of the State of Texas, sitting in equity:

Jesus Hernandez, of the county of Bexar, in the State of Texas, and citizen of the State of Texas, bring this their bill against Isaac L. Lyon, of the county of Wayne, in the State of Michigan, and a citizen of the State of Michigan:

And thereupon your orator and oratrix complain and say that on the 24th day of August, A. D. 1865, the said Isaac L. Lyon was the legal owner of a certain lot or piece of land, lying in the said county of Bexar, in the State of Texas, and within the western district of the said State of Texas, described as follows, to wit: A lot on the northeast corner of Solidad street, and of the fourth cross-street or alley
3 (running east and west) north of the main plaza of the city of San Antonio, beginning at the northeast corner of a lot of P. C. Taylor, on Solidad street; thence with the line of Solidad street, N. $2\frac{3}{4}$, W. $27\frac{1}{4}$ varas, to the corner of the above-mentioned alley; thence with said alley, N. 88°, W. $27\frac{3}{4}$ varas; thence S. $5\frac{3}{4}$, E. $27\frac{1}{8}$ varas; thence S. $87\frac{1}{2}$°, E. $27\frac{3}{4}$ varas, to the place of beginning. That said Lyon, then being the owner of said lot, on said 24th day of August, 1865, did make, execute, and deliver unto I. A. Paschal a certain instrument of writing, whereby he, the said Lyon, authorized and empowered the said Paschal to make sale of any and all real estate of which he, the said Lyon, was then seized, and situated in the said county of Bexar, in the State of Texas, and that the lot above described was one of the peices of real estate which the said Paschal was thus authorized to sell by the said Lyon. A copy of the instrument here referred to, by which the said power to make sale was granted to the said Paschal by the said Lyon, is attached to this bill, marked "Exhibit A," and made a part thereof.

Your orator and oratrix are informed and believe, and there-
4 fore further say, that the said Lyon represented the said Paschal to be his agent and attorney, and that he, the said Paschal, was by him, the said Lyon, authorized to make sale of the said lot aforesaid.

Your orators and oratrix are further informed and believe, and therefore further say, that prior to the date of the instrument aforesaid, and until on or about the first day of July, 1865, W. A. Bennett, of the said county of Bexar, was the duly authorized agent and attorney in fact of the said Isaac L. Lyon, in and about the business of said Lyon in the county of Bexar, State of Texas, holding a full power of attorney from said Lyon to manage and control, sell and convey, any and all property of said Lyon, both real and personal; that on or about said last-mentioned day the said Bennett transferred the business of his said agency to the said Paschal, fully informing at the same time the said Lyon of the transfer he had made to the said Paschal; that upon the information thus communicated by the said Bennett to the said Lyon he, the

said Lyon, did write, execute, and deliver to the said Paschal the
5 instrument above mentioned, and did thereby authorize and empower the said Paschal to make sale of the lot of land above described, among other real estate than owned by said Lyon, situated in the said county of Bexar.

Your orator and oratrix are further informed and believe, and therefore further say, that after the transfer of the business of said agency by the said Bennett to the said Paschal, and after the said Lyon had executed and delivered the instrument aforesaid to the said Paschal, he, the said Paschal, was by the said Lyon regarded, treated, and recognized as the duly authorized agent and attorney of said Lyon, and your orator and oratrix therefore say that he, the said Paschal was, by virtue of the premises, the duly authorized agent and attorney of the said Lyon, with power and authority to make sale of the lot of land hereinbefore described. That being so vested with power and authority to sell, the said I. A. Paschal did, on the 24th day of April, 1866, as the attorney and agent of said Lyon, make sale of the lot above described to your oratrix, the said Katherine Hernandez, then Wiffling, she having since intermarried with the said Jesus Hernandez, your ora-
6 tor; that your oratrix, upon the sale so made to her by the said Paschal, paid to him, the said Paschal, as the agent and attorney of said Lyon, the sum of seven hundred dollars, as the consideration of the lot aforesaid, and that the said Paschal thereupon, to wit, as the agent and attorney of said Lyon, mad', executed, and delivered to your oratrix a certain instrument of writing, to wit, a deed of conveyance, in and by which, in consideration of the sum aforesaid, the said Paschal, as such attorney, granted, bargained, released, conveyed, and delivered unto your oratrix the lot of land above described, a copy of which said instrument is hereto attached as part of this bill, marked "Exhibit B," and your orator and oratrix say that the sum so paid by your oratrix for said lot to the said Paschal was the full value thereof at the time of said sale and payment.

Your orator and oratrix further say that the deed of conveyance by which the lot aforesaid was granted to the said Lyon had been prior to the time of said sale delivered by the said Lyon into the hands of the said Paschal, and that the same was delivered by the said
7 Paschal to your oratrix, together with the deed of conveyance made to her by said Paschal.

Your orator and oratrix further say that after the sale aforesaid by said Paschal to your oratrix, the said Lyon ceased to regard said lot as his property; that he made no claim to the same in any manner, and that he acquiesced in the sale thereof, that he did not exercise or attempt to exercise any control or ownership over said lot, nor has he at any time since the said 24th day of April, 1866, paid any taxes thereon, but on the contrary your oratrix say' that on the day last aforesaid your oratrix took possession of and used and enjoyed said lot as her own property until her marriage with your , which occurred in the month of March, 1868, and that she with her husband, your said orator, since their marriage have had and held continuous peaceable, adverse, notorious, and uninterrupted possession, use, and enjoyment of said lot, claiming the same as their own property and making permanent and valuable improvements thereon, as hereinafter set forth, until the institution of the suit hereinafter mentioned, and that they
8 during all that time, to wit, from the said 24th day of April, 1866, down to the present time, paid all taxes assessed thereon for State, county, and city purposes; all of which your orator and oratrix

verily believe, and so charge, was with the knowledge and consent of the said Lyon.

Your orator and oratrix further say that the amount of the purchase-money paid for said lot by the said Katherine was by the said Paschal, as attorney of said Lyon, received, and as your orator and oratrix are informed and believe, and thereupon say, by him, the said Paschal, appointed, used, and paid out in the discharge of debts and liabilities of the said Lyon, with the consent of him, the said Lyon; that the said Lyon was at the time of the sale aforesaid, as well as before and since that time, the owner of six hundred shares of the stock of the San Antonio Gas Company, a body corporate in the county of Bexar aforesaid, one-half of which stock had been paid up by the said Lyon, the other half being unpaid, and each of said shares being one hundred dollars, and liable to assessment by said company; that an assessment
9 upon the stockholders of said company was made on the 18th day of April, 1863, of 2½ per cent., which was reduced on the first of September, 1865, so as to amount to four hundred and fifty dollars upon the stock of said Lyon: that a further assessment was made on the 31st day of October, 1865, amounting to fourteen hundred and seventy-five dollars, upon the shares of said Lyon; that a still further assessment, amounting on the shares of said Lyon to the further sum of fourteen hundred and seventy-five dollars, was made on the 31st day of March, 1866, and that a still further assessment was made on the first day of March, 1867, amounting on the shares of said Lyon to the sum of twenty-three hundred and sixty dollars; that for the purpose of saving the stock of said Lyon, the said Paschal paid the several assessments aforesaid, all of which were duly made by said gas company, and that the sum received by said Paschal from your oratrix was appropriated and used by the said Paschal in part payment of the assessments aforesaid, and that thereby the said Lyon has received and accepted
10 for his use and benefit the said amount of purchase paid as aforesaid by your oratrix, and that by reason of the premises your oratrix has fully paid the value of the lot aforesaid to the said Lyon in accordance with the terms entered into by the said Lyon through his said attorney with your oratrix.

Your orator and oratrix further say that, upon the purchase of the lot aforesaid by your oratrix, to wit, on the said 24th day of April, 1866, she paid the purchase-money thereof to the said Paschal, as agent as aforesaid, to wit, the sum of seven hundred dollars; that she thereupon took and held possession of the same until her said marriage, and that since her said marriage your orator and oratrix have held possession of the said lot in good faith to the present time; that she and your said orator and oratrix have made permanent and valuable improvements upon said lot, to wit, she and they have erected thereon a dwelling-house and outhouses, all of which have been continuously occupied and enjoyed by her and them as aforesaid since the time aforesaid.

And your orator and oratrix humbly suggest to your honors that they have had peaceable adverse possession of the lot of land
11 above described in good faith for more than one year next before the institution of this suit hereinafter referred to, and that they have made permanent and valuable improvements on the said land during the time they had possession of the same, said improvements consisting as aforesaid of a dwelling-house and outhouses erected and occupied by them, and that their said improvements are of the value of six thousand dollars. And your orator and oratrix well hoped that no dispute would have arisen touching their ownership of the lot of

land above described, but that the said Lyon would have continued to acquiesce in the sale of said lot by his said attorney, as in conscience and equity he ought to have done.

But now so it is, may it please your honors, that the said Isaac L. Lyon denies the authority of the said I. A. Paschal to make the sale aforesaid, and disregarding the rights of your orator and oratrix, as well as the sale made by his agent as aforesaid, and denying their right to a conveyance or deed under said sale, the said Lyon did, to the January term, 1873, file his petition in the circuit court of the United
12 States for the western district of Texas, for the recovery of the said lot of land, and that at the June term, 1873, of said court, he, the said Lyon, received a judgment against your orator and oratrix for the said lot of land, and that upon said judgment a writ of possession will issue and your orator and oratrix will be ousted from the possession of said lot, unless the said Lyon is restrained and enjoined by your honors' most gracious writ of injunction or order staying further proceedings under and upon said judgment.

Your orator and oratrix humbly show that the judgment above set forth was obtained by said Lyon upon the trial of the legal title alone to the lot aforesaid, and that the rights of your orator and oratrix, as hereinbefore set forth, are of an equitable nature and constitute a good and perfect equitable title to said land in your oratrix, and could not be asserted or received as a defence in a court at law. Yet your orator and oratrix are advised that the facts set forth in this bill constitute your oratrix the owner in fee-simple of said lot, and that your orator and oratrix are the rightful possessors thereof; and they aver
13 that the actings, doings, and pretences of the said Lyon are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator and oratrix.

In consideration thereof, and forasmuch as your orator and oratrix are entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and reliable: To the end, therefore, that the said Isaac L. Lyon may, if he can, show why your orator and oratrix should not have the relief hereby prayed, and may, upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make, whether the allegations contained in this bill of complainants are true; and, if nay, how, with truth, is the contrary to be made out; and where, in each and every particular, is any or all of the said allegations of complainants' bill untrue?

And that the said Isaac L. Lyon may come to a fair and just account, your orator and oratrix humbly pray that, the premises considered,
14 the said Lyon may be decreed to make and execute a proper conveyance to the lot hereinbefore described, and that the title in fee-simple to the said lot may be decreed to be in your oratrix, free and discharged from any and all claim of the said Lyon and all persons claiming through and under him.

And your orator and oratrix further humbly pray, that in case the relief above prayed for cannot be granted to them by your honors, but that a decree of eviction is entered against them, and the judgment of the circuit court, heretofore rendered and above set forth, is allowed to be carried into execution, then and in that case they may have the value of their improvements allowed them, and judgment or a decree therefor in accordance with the statute of the State of Texas in such case made and provided, and that in that case the amount paid by your oratrix for

said lot, with lawful interest thereon from the date of its payment, may also be decreed to them with a lien upon said lot to secure the payment thereof, and that your orator and oratrix may have such further and other relief in the premises as the nature of their case shall
15 require and as to your honors shall seem meet.

May it please your honors to grant to your orator and oratrix, not only the most gracious writ or writs of injunction of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the said Isaac L. Lyon, to restrain him from having a writ of possession issued upon the judgment heretofore rendered as above set forth, or from the execution of said judgment in any manner, and to restrain him from any and all further proceedings at law against your orator and oratrix, touching any of the matters in question; but also, the most gracious writ or writs of subpœna of the said United States of America, to be directed to the said Isaac L. Lyon, to be served personally upon him, should he be or come within the jurisdiction of this honorable court, thereby commanding him at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors
16 shall seem meet, and as shall seem agreeable to equity and good conscience.

And your orator and oratrix further pray that inasmuch as the said Isaac L. Lyon is a non-resident of this, the State of Texas, and is out of the jurisdiction of the court, but hath attorneys of record in the said case at law herein aforesaid, and that inasmuch as service cannot be had upon the said Lyon by personal service so as to compel him to answer the prayer herein made for prelimnary injunction, that the subpœna may be served upon his said attorneys of record, viz, Mess'rs Chandler, Carleton, and Robertson, residents in the city of Austin, within the said western district of Texas, and that when said service of subpœna shall be made on said attorneys of record, that such service may be deemed and held good service on the said Isaac L. Lyon. And they further pray that in the event your honors cannot grant the full relief herein prayed, then they specially pray that the writ of injunction may on final trial be perpetuated and your orators and oratrix be maintained and protected in their said equitable title afore-
17 described.

And as in duty bound your orator and oratrix will ever pray.

KATHERINE HERNANDEZ,
JESUS HERNANDEZ,
Per WAELDEN & UPSON,
Counsel for Complainants.

WALTON & GREEN,
WAELDEN & UPSON,
Sol's for Complainants.

THE STATE OF TEXAS,
County of Bexar:

On this fifth day of July, A. D. 1873, personally appeared before me, a notary public in and for said county, Katherine Hernandez, who, after being by me duly sworn, deposes and says that the facts contained in the foregoing bill, as far as stated upon the knowledge of affiants, are true, and those stated upon information and belief the' believe to be true.

KATHERINE HERNANDEZ.
JESUS HERNANDEZ.

Sworn and subscribed before me this 5th day of July, 1873. In testimony whereof I have hereunto subscribed my name and affixed my official seal.

[L. S.]

JULIUS HOYER,
Not. Pub. Bexar Co., Texas.

18 *Exhibit A.*

MONTEREY, *August 24th*, 1865.

I. A. PASCHAL:

MY D'R SIR: I am just in receipt of a letter from M'r Bennett, informing me that he has placed all my papers for safe keeping in your possession. In better or safer hands he could not have given them. The position you have acquired during the past four years of the war is a very enviable one, as glorious as it has been dangerous. I congratulate you upon the issue. I am sure you have no reason to regret your decision to abide by the Union. I trust you shall be rewarded in proportion as traitors shall be cursed. We have a herd of Texas traitors in Mexico at the present time. I can only say but little. I am unable to go to San Antonio at present. My family are sick in the North & demand my presence there. M'r's Kinney's death leaves a large business in my hands to be settled. I wish you to manage as you would wish your own. If an opportunity offers to sell everything I have, would be glad to sell. It may be parties will come into San Antonio who will be glad to purchase my gas-stock and real estate. I shall be glad, if you find time to
19 write to me, if you will, give me a description of affairs as they exist at present. I shall probably remain here 2 months yet. I notice you have a note of M'r Fonda's belonging to M. C. She left some stock in the hands of his adopted son. Can you not find out what has become of it, & if possible get hold of it as security? Can you tell me whether I can collect notes that have been paid by parties in Confed. paper to N. O. Green? I do not see how the payment under such circumstances can release them any more than payment to N. O. Green of the am't of Northern indebtedness can release a merchant from obligation to pay his Northern creditor. I enclose a letter for my wife. It is impossible to send letters by Matamoras. The road has been blockaded for a long time. If you have a regular mail I shall be greatly obliged if you will mail this letter; if no mail will you do me the favor to send by private hands to New Orleans?

Most resp'y yours,

I. L. LYONS.

20 *Exhibit B.*

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that Isaac L. Lyons, by my attorney in fact, I. A. Paschal, of the county of Bexar, and State of Texas, for and in consideration of seven hundred dollars, to me in hand paid by Katherine Wefing, of the county of Bexar, and State of Texas, the receipt whereof is hereby acknowledged before the signing, sealing, and delivering of these presents, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, convey, and deliver unto the said Katherine Wefing, her heirs and assigns, all that tract or parcel of land lying and being in the county of Bexar, and within the city of San Antonio, and fronting on the west

side of Soledad st., about twenty-seven varas, and fronting on a callejon which seperates the lot therein sold from the stone warehouse of John Fries, situated on the north side of said callejon and on the west side of Soledad st.; and said lot herein sold being bounded on the south by a lot of ground formerly owned and improved by Emil Abah, and on the west by a picket fence, being the same lot purchased
21 by the said Isaac L. Lyons of Lema Arocho and wife on the 11th of August, 1861, together with all and singular the rights, members, hereditaments, and appurtenances to the same belonging, or in anywise incident or appertaining, to have and to hold all and singular the premises above mentioned unto the said Katherine Wefing, her heirs and assigns, forever; and I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said Katherine Wefing, her heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In testimony whereof I have hereunto subscribed my hand and affixed my seal, using scrawl for my seal, in the city of San Antonio, this 24th day of April, A D. one thousand eight hundred and sixty-six.

(Signed) ISAAC L. LYONS.
I. A. PASCHAL. [SEAL.]

[Revenue stamp, $1.00.]

Sealed and delivered in the presence of—
THO'S H. STRIBLING.
RIGE PASCHAL.

22 U. S. circuit court, in chancery sitting.

AUSTIN, *July* 21*st*, 1873.

The clerk of the U. S. circuit court at Austin, Texas, will issue the writ of injunction as prayed for in the foregoing bill, enjoining and restraining the defendant, Isaac L. Lyon, his agents and attorneys, from having a writ of possession under and by virtue of a judgment at law, rendered by the circuit court of the United States for the western district of Texas, at Austin, at the June term, 1873, in a cause wherein the said Lyon was plaintiff, and the complainants to this bill were defendants, and from all further proceedings thereunder until the further order of this court in the premises.

The clerk will also issue writs of subpœna to said Lyon, to be served on the attorneys of the plaintiff in the suit at law as prayed for, returnable according to law.

T. H. DUVAL,
U. S. Judge.

23 Notice of application for injunction is endorsed "Filed July 20, 1873. M. Hopkins, cl'k," and is in words, to wit:

Notice, &c., of application for injunction.

In U. S. circuit court for west. dist. of Texas, at Austin.

JESUS & KATHARINE HERNANDEZ, COMP'S, *vs.* ISAAC L. LYON, DEF'T. } 70. In chancery.

Take notice that this honorable court will be moved for and in behalf

of the plaintiff', on the 21st day of July, 1873, that the defendant may be restrained from prosecuting any further proceedings at law to recover the possession of the premises named in the complainants' bill, or prosecuting the same in respect to other matters mentioned in said bill.

WALTON & GREEN,
Sol. for Complainant'.

To the defendant, or Chandler, Carleton & Robertson, his attorneys of record.

This notice applies to cases (No. 71), Joseph Marowitz vs. Isaac L. Lyon; (No. 72), Franz & Katharine Pollock vs. Isaac L. Lyon; (No. 73), Franz Oscke vs. Isaac L. Lyon; (No. 74), Adam Gorvell vs. Isaac L. Lyon; (No. 75), John Safersick vs. Isaac L. Lyon; (No. 77), Frank Keilbusa vs. Isaac L. Lyon—all pending in the U. S. circuit court for western district of Texas, at Austin, in chancery.

WALTON & GREEN,
Sol. for Comp'ts.

To the defendant, Isaac L. Lyon, or his att'ys of record, Chandler, Carleton & Robertson.

We accept service of this notice as to all the cases above mentioned.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Isaac L. Lyon.

July 19th, 1873.

24 *Of subpœna & return.*

Process of subpœna issued in due form, July 23, 1873. The marshal's return upon which is endorsed, to wit:

Served July 24, 1873, by delivering to F. W. Chandler, att'y of record of Isaac L. Lyon, in person, with a true copy of this writ, certified by the clerk of the U. S. circuit court at Austin, under the seal of the court.

THOMAS F. PURNELL,
U. S. M. W. D. T.,
Per JOHN H. TRAYNHAM,
Dep. U. S. M.

On the same day, to wit, July 23, 1873, injunction issued; endorsed. "Issued July 23d, 1873. M. Hopkins, cl'k."

The writ is in words to wit:

Writ of injunction.

United States circuit court, in and for the western district of Texas, at Austin, sitting for the June term, 1873.

Whereas Jesus & Katharine Hernandez, of the county of Bexar, western district of Texas, on the 8 day of July, A. D. 1873, filed on the equity side of this court their bill in chancery, No. 70, praying the court for the reasons therein assigned for the writ of injunction enjoining and restraining the plaintiff, Isaac L. Lyon (in suit at law No. 1300, against the said Jesus and Katharine Hernandez, defendants), and all other persons, from proceeding further with said suit at law, or from enforcing or attempting to enforce the judgment at law entered at

the June term, 1873, of said court, by writ of possession or otherwise, until the further order of the court; and it having pleased the Hon. Thomas H. Duval, sitting at said term as circuit court judge, to
25 grant the prayer of the complainant and to order that said writ of injunction should issue:

Now, therefore, these are to command you, as marshal of the western district of Texas, to enjoin and restrain the said Isaac L. Lyon and his attorneys of record, Chandler, Carleton & Robertson, from any further proceeding in said suit at law, or from attempting to enforce the same by process of this court, or in any other manner until, after hearing the further order of the court may be made thereon. You will serve Chandler, Carleton & Robertson with a copy of this writ of injunction and make return of your proceedings forthwith.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 23d day of July, A. D. 1873.

[L. S.] M. HOPKINS, *Clk.*

Return.

The marshal' return thereon is endorsed, to wit:

Served July 24, 1873, by delivering to T. W. Chandler, in person, a true copy of this, certified by the clerk of the U. S. circuit court at Austin, under the seal of said court.

THOMAS F. PURNELL,
U. S. M. W. D. T.,
Per JOHN H. TRAYNHAM,
Deputy.

26 *Answer of Def't I. L. Lyon.—Filed Oct.* 6, 1873.—*M. Hopkins, clk.*

JESUS HERNANDEZ & KATHARINE HERNANDEZ, complainants, *vs.* ISAAC L. LYON, DEFENDANT. } No. 70.

JESUS & KATHARINE HERNANDEZ *vs.* ISAAC L. LYON. } No. 70.

Bill in chancery pending in the circuit court of the United States in the western district of Texas, at Austin:

The answer of the defendant, Isaac L. Lyon:

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainanst' said bill of complaint contained, for answer thereunto and unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto—

This defendant, answering, saith that he was on the 24th day of August, 1865, the legal and equitable owner of the lot or piece of land described in the complainants' bill of complaint, and avers that he is now the legal and equitable owner of said lot or piece of land; but this defendant most positively denies that he executed to the said I. A. Paschal any instrument of writing on the 24th day of August, 1865, or upon any

other day or time, by which he authorized or empowered the said I. A. Paschal to sell or convey the lot of land described in complainants' bill of complaint, or any other piece or tract of land.

And this defendant most positively denies that there is, in the letter written by the defendant to said I. A. Paschal, dated 24th of August, 1865, a copy of which is appended to complainants' bill of complaint marked "Exhibit A," vested any power or authority in the said I. A. Paschal to sell or convey said lot or piece of land, and this defendant most positively denies that he intended to authorize or empower the said I. A. Paschal to sell or convey said lot or piece of land, or that said letter or instrument of writing did confer upon the said I. A. Paschal any equitable or legal right or authority to sell said lot or piece of land to the complainants or either of them, or to any one else.

And this defendant most positively denies that he ever did represent to any party or parties that the said I. A. Paschal was his agent or attorney with authority to make sale of the aforesaid lot, or of any other lot or piece of property this defendant owned in Texas or elsewhere; that the said I. A. Paschal never had any authority to act as the agent or attorney of this defendant except to take care of and safely keep the papers of this defendant, and to collect or secure some doubtful
27 debts due this defendant, if he could; and this defendant further denies that he ever at any time authorized or empowered the said I. A. Paschal to sell or convey said lot of land.

This defendant admits that prior to the first day of August, 1865, the said W. A. Bennett held a power of attorney from the defendant, a copy of which is hereto appended, marked "Exhibit A," and made a part of this answer.

But this defendant denies that said power of attorney to the said W. A. Bennett contains any power of substitution, or that it conferred any power or authority upon the said W. A. Bennett to substitute the said I. A. Paschal to act as agent of this defendant, or any one else, to sell or convey the aforesaid lot or any other property that belonged to this defendant.

This defendant admits that prior to the 24th day of August, 1865, the said W. A. Bennett did deliver to the said I. A. Paschal for safe-keeping the papers of this defendant, but this defendant denies that there was any transfer in writing of said papers, or any other thing done between the said W. A. Bennett and the said I. A. Paschal, more than that the said W. A. Bennett delivered said papers for safe-keeping to the said I. A. Paschal, or that the said W. A. Bennett undertook to confer upon the said I. A. Paschal the power or authority to sell or convey the aforesaid lot of ground, or that the said I. A. Paschal at the time received said papers with any other understanding or purpose than to safely keep them for this defendant.

This defendant admits that when he was informed that the said W. A. Bennett had delivered his papers to the said J. A. Paschal for safe-keeping that he wrote the said I. A. Paschal a letter, a copy of which is made a part of complainants' bill of complaint, but this defendant most positively denies that he did, by the writing and signing of said letter, authorize or empower the said I. A. Paschal to sell or convey said lot or piece of land or any other property that belonged to this defendant in San Antonio or elsewhere, or that he intended, by the execution of said letter, to authorize or empower the said I. A. Paschal to sell or convey the same.

And for further answer this defendant most positively denies that after he had written the aforesaid letter to the said I. A. Paschal, dated

the June term, 1873, of said court, by writ of possession or otherwise, until the further order of the court; and it having pleased the Hon. Thomas H. Duval, sitting at said term as circuit court judge, to
25 grant the prayer of the complainant and to order that said writ of injunction should issue:

Now, therefore, these are to command you, as marshal of the western district of Texas, to enjoin and restrain the said Isaac L. Lyon and his attorneys of record, Chandler, Carleton & Robertson, from any further proceeding in said suit at law, or from attempting to enforce the same by process of this court, or in any other manner until, after hearing the further order of the court may be made thereon. You will serve Chandler, Carleton & Robertson with a copy of this writ of injunction and make return of your proceedings forthwith.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 23d day of July, A. D. 1873.

[L. S.] M. HOPKINS, *Clk.*

Return.

The marshal' return thereon is endorsed, to wit:

Served July 24, 1873, by delivering to T. W. Chandler, in person, a true copy of this, certified by the clerk of the U. S. circuit court at Austin, under the seal of said court.

THOMAS F. PURNELL,
U. S. M. W. D. T.,
Per JOHN H. TRAYNHAM,
Deputy.

26 *Answer of Def't I. L. Lyon.—Filed Oct.* 6, 1873.—*M. Hopkins, clk.*

JESUS HERNANDEZ & KATHARINE HERNANDEZ, complainants,
vs.
ISAAC L. LYON, DEFENDANT. } No. 70.

JESUS & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70.

Bill in chancery pending in the circuit court of the United States in the western district of Texas, at Austin:

The answer of the defendant, Isaac L. Lyon:

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainanst' said bill of complaint contained, for answer thereunto and unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto—

This defendant, answering, saith that he was on the 24th day of August, 1865, the legal and equitable owner of the lot or piece of land described in the complainants' bill of complaint, and avers that he is now the legal and equitable owner of said lot or piece of land; but this defendant most positively denies that he executed to the said I. A. Paschal any instrument of writing on the 24th day of August, 1865, or upon any

other day or time, by which he authorized or empowered the said I. A. Paschal to sell or convey the lot of land described in complainants' bill of complaint, or any other piece or tract of land.

And this defendant most positively denies that there is, in the letter written by the defendant to said I. A. Paschal, dated 24th of August, 1865, a copy of which is appended to complainants' bill of complaint marked "Exhibit A," vested any power or authority in the said I. A. Paschal to sell or convey said lot or piece of land, and this defendant most positively denies that he intended to authorize or empower the said I. A. Paschal to sell or convey said lot or piece of land, or that said letter or instrument of writing did confer upon the said I. A. Paschal any equitable or legal right or authority to sell said lot or piece of land to the complainants or either of them, or to any one else.

And this defendant most positively denies that he ever did represent to any party or parties that the said I. A. Paschal was his agent or attorney with authority to make sale of the aforesaid lot, or of any other lot or piece of property this defendant owned in Texas or elsewhere; that the said I. A. Paschal never had any authority to act as the agent or attorney of this defendant except to take care of and safely keep the papers of this defendant, and to collect or secure some doubtful
27 debts due this defendant, if he could; and this defendant further denies that he ever at any time authorized or empowered the said I. A. Paschal to sell or convey said lot of land.

This defendant admits that prior to the first day of August, 1865, the said W. A. Bennett held a power of attorney from the defendant, a copy of which is hereto appended, marked "Exhibit A," and made a part of this answer.

But this defendant denies that said power of attorney to the said W. A. Bennett contains any power of substitution, or that it conferred any power or authority upon the said W. A. Bennett to substitute the said I. A. Paschal to act as agent of this defendant, or any one else, to sell or convey the aforesaid lot or any other property that belonged to this defendant.

This defendant admits that prior to the 24th day of August, 1865, the said W. A. Bennett did deliver to the said I. A. Paschal for safe-keeping the papers of this defendant, but this defendant denies that there was any transfer in writing of said papers, or any other thing done between the said W. A. Bennett and the said I. A. Paschal, more than that the said W. A. Bennett delivered said papers for safe-keeping to the said I. A. Paschal, or that the said W. A. Bennett undertook to confer upon the said I. A. Paschal the power or authority to sell or convey the aforesaid lot of ground, or that the said I. A. Paschal at the time received said papers with any other understanding or purpose than to safely keep them for this defendant.

This defendant admits that when he was informed that the said W. A. Bennett had delivered his papers to the said J. A. Paschal for safe-keeping that he wrote the said I. A. Paschal a letter, a copy of which is made a part of complainants' bill of complaint, but this defendant most positively denies that he did, by the writing and signing of said letter, authorize or empower the said I. A. Paschal to sell or convey said lot or piece of land or any other property that belonged to this defendant in San Antonio or elsewhere, or that he intended, by the execution of said letter, to authorize or empower the said I. A. Paschal to sell or convey the same.

And for further answer this defendant most positively denies that after he had written the aforesaid letter to the said I. A. Paschal, dated

24th of August, 1865, or at any other time before or since that date, that he regarded or treated or recognized the said I. A. Paschal as the duly-authorized agent or attorney of this defendant further than to preserve his papers, and in case he found any party or parties that wished to purchase all the property this defendant owned in San Antonio for him, the said I. A. Paschal to inform this defendant of the fact so that this defendant might negotiate the sale.

And this defendant says if the said I. A. Paschal, on the 24 day of April, 1866, or upon any other day or time, did sell or convey the aforesaid lot or piece of land to the complainant, Katharine Hernandez, then Katharine Wessing, as the agent or attorney of this defendant, and received the money therefor, as alleged in complainants' bill of complaint, this defendant most positively denies that the said I. A.
28 Paschal had any right or authority from this defendant to do or perform any one or all of said acts, either written or verbal, and avers that the said I. A. Paschal had no authority, written or verbal, from this defendant, directly or indirectly, to sell said lot or to execute any deed to the complainants for the same, or to receive any money therefor in the name or for or on account of this defendant. For the aforesaid reasons and the reasons hereinafter stated by this defendant, said alleged sale by the said I. A. Paschal and purchase by complainant, Katharine Hernandez, was, and is, null and void, and has no binding force or effect upon this defendant, neither does the same in anywise effect the superior title of this defendant to said lot.

This defendant says he has no personal knowledge of the actual value of said lot at the date of the pretended purchase thereof by the complainant, Katherine Hernandez, on the 24th of April, 1866, because, he says, when the war broke out it was known that he was what was called a Union man, a man opposed to the Confederate Government, and he was informed and believed, and from such information and belief charges the fact to be, that there was a secret society and combination of men in favor of the Confederate Government known as the committee called the Knights of the Golden Circle, a number of whom were appointed to hang this defendant on account of his known fidelity to the United States Government; that in consequence thereof he was compelled to leave the country in a secret manner to save his life, and in such haste that he had no time to secure his papers; that after the war ceased, to wit, in the years 1865 and 1866, he was informed and believed that his life would be in imminent danger if he returned to San Antonio to look after and attempt to recover the property that he had been no better than robbed of. For the above reasons, this defendant says he is unable to state, of his own knowledge, whether 700 dollars was a fair value for the lot or piece of land involved in this suit at the date of complainants' pretended purchase, but says he is informed and believes and from such information and belief he charges the fact to be, that said lot was, at the date of said pretended purchase by complainants, worth more than 700 dollars, to wit, the sum of , and that he is informed and believes, and from such information and belief alleges, that said lot is now intrinsically worth $2,000, without the improvements alleged to be put thereon by the complainants.

And further answering, this defendant admits that the deed of conveyance under which this defendant claimed and owns the aforesaid lot or piece of land was in the hands of the said I. A. Paschal for safekeeping for this defendant, and this defendant avers for no other purpose, and if the said I. A. Paschal did deliver said deed to complainants, which this defendant neither admits or denies, but asks that com-

plainants may be held to strict proof of the same, then this defendant avers that the said I. A. Paschal had no power, right, or authority
29 to deliver the same to complainants, and that the same was done without the authority, knowledge, or consent of this defendant.

And for further answer this defendant says he knew that I. A. Paschal was deeply involved in debt, and that he was a very careless business man, and while he would employ him as a lawyer, he never would have been willing to entrust him with a power of attorney to sell and convey real estate and receive the money therefor.

And this defendant most positively denies that, since he first purchased said lots, *that* he has ever ceased to regard said lots as his own property in fee-simple, or that he has ever ceased to claim the same, or that he has at any time, either by word, act, or inuendo, acquiesced in the pretended sale by the said I. A. Paschal to the complainant, or any other party, and says the charge is wholly untrue; that, on the contrary, this defendant has at all times, and upon all occasions, when the same was referred to or spoken of in his presence, claimed the same as his own property, and denied the claim of complainants and all other parties; that the only reason why he has not long since attempted to take actual possession of said lot, as well as his other property in San Antonio, is because he was informed and believed that he would be in danger of great bodily harm, if not in danger of losing his life, if he were to attempt it, and for no other reason has he failed to take actual possession of said lot and his other property in San Antonio.

This defendant admits that he has not paid any taxes on said lot since 1865, neither does this defendant know who has paid the taxes thereon except what he has learned from the allegations in the complainants' bill of complaint, which he neither admits or denies, but says if the complainants have paid the taxes thereon that they have done so without the request, knowledge, authority, or consent of this defendant, and therefore this defendant avers that he is not responsible for or liable to the complainants for the amount so paid by them, if anything.

And, further answering, this defendant says that he has no knowledge of the complainant or either of them taking possession of said lot, or when they did so, or how long they have had the same in actual possession, or what amount of improvements they have put upon the same, or the value thereof, or when they did it, except from the allegations in their bill of complaint, none of which does this defendant admit, but asks that the complainants may be held to strict proof of the same; and this defendant says if complainants took possession of said lot and made any improvements thereon, that it was done without the authority, knowledge, or consent of this defendant, either directly or indirectly, with full knowldege upon their part that said lot was the property of this defendant, and not theirs; that said improvements, if any such have been made, were made without the knowledge, consent, or desire of this defendant, by reason whereof this defendant alleges that he is not chargeable with the value of said alleged improvements or any part thereof.

And, further answering, this defendant says that if the complainants ever did pay the said I. A. Paschal what they allege to be the
30 purchase-money for said lot, which he does not admit, and if the said I. A. Paschal ever did attempt to appropriate the same, or any part thereof, to the payment of any alleged debt or liabilities against this defendant, which this defendant in nowise admits, then he most positively avers that the said I. A. Paschal received and paid out the same without the authority, knowledge, or consent of this defendant,

either directly or indirectly; but this defendant admits that when he was forced to leave the country he was the owner of 600 shares of stock in said gas company, and that he paid up half of the amount of said stock, and avers that said company was largely indebted to him when he left the State and country; that he has no knowledge of the assessment of 2½ per cent. on the 18th of April, 1863, except what he learns from the allegations in the complainants' bill of complaint, that he in nowise admits, but this defendant says if said assessment was so made, that it was not and is not binding upon this defendant, because he says that said assessment was made in the State of Texas, one of the then so-called Confederate States, which was then in a state of rebellion against the national government, the United States of America, and that this defendant was then, and has ever since been, a resident, citizen of, and adherent to the said United States, living without and beyond the limits of the Confederate States, by reason of which said alleged assessment was not, at the date thereof, nor at the date of its alleged payment, as well as all the other alleged assessments and payments upon said gas stock, legal or binding upon this defendant.

And this defendant further avers that if the said I. A. Paschal ever did pay any of the alleged installments assessed upon the stock of said gas company, which he does not admit, then this defendant most positively avers that each and all of such assessments were made and the payments were made without the authority, knowledge, or consent of this defendant, either directly or indirectly, and that this defendant had no notice of said assessments being made until long since said pretended payment had been made, by reason thereof none of the aforesaid actings and doings on the part of the said I. A. Paschal with the complainants are legal or binding upon this defendant; and this defendant most positively denies that he has at any time, either by word, act, or innendo, either in writing or verbally, acquiesced in the alleged act of I. A. Paschal in receiving or paying said sum of money, or the installments upon the capital stock of said gas company.

And, further answering, this defendant says he knows nothing of the improvements alleged by complainants to have been put upon said lot, except from the allegations in their said bill of complaint, or the value thereof, or the length of time that they have held possession thereof, but this defendant denies the allegations in said bill, that they held possession of said lot, or made valuable improvements thereon in good faith, or that they are entitled to any pay for the same, because, he says, the instrument of writing attached to and made a part of the bill of complaint, marked "Exhibit A," shows upon its face that the said I. A. Paschal had no legal or equitable right, power, or authority to sell or convey said lot to said complainant Katharine Hernandez, and because no one can be an innocent purchaser in good faith unless his vendor has a clear legal title upon its face, and the complainants have not alleged,
31 or shown by exhibits or otherwise, that they rely upon a legal title, and because their alleged equitable title under which they claim shows upon its face that it does not contain the power to pass even an equitable right, title, or claim to the aforesaid lot or piece of land.

And, for further answer, this defendant denies that the complainants, or either of them, have, or ever had, any legal or equitable right, title, or interest in or to the aforesaid lot or piece of land, or that they are legally or equitably entitled to any remuneration for any improvements that they may have put upon said lot, because they had full notice, both actual and constructive, that this defendant was the legal owner of said

lot when they entered upon and took possession of said lot and made said improvements, if any, and because this defendant has no use for said improvements and the same are valueless to this defendant, and this defendant denies that the improvements alleged to be made upon said lot are worth the sum of 6,000 dollars, or anything like said sum, and this defendant says that he is informed and believes, and from such information and belief alleges the fact to be, that the rent, use, and occupation of said lot, from the 24 day of April, 1866, to the present time, is worth the sum of dollars per month, which said sum the complainants are justly indebted, liable, and bound to pay this defendant; for which said sums this defendant prays for judgment against the complainants.

And this defendant, further answering, avers that he never did, at any time since the 24th day of April, 1866, in any manner, shape, or form, directly or indirectly, verbally or in writing, acquiesce in the possession or alleged title of the complainants to the lot or piece of land in controversy, but always did and does claim the same as his own property, and he admits that he did institute an action on the law side of the circuit court of the United States for the western district of Texas, at Austin, to recover possession of the said real estate; and he further admits that he did, at the June term, 1873, obtain and recover a judgment against the complainants herein named for the lot described in complainants' bill of complaint in said last-named court, on which said judgment a writ of possession was awarded him for the property in controversy against said complainants; and this defendant further avers that the said judgment was and is a valid, subsisting, and binding judgment of a court of competent jurisdiction, unreversed and unappealed from, and does and has fully settled all questions between the complainants and this defendant as to the property and rent of the real estate described in the bill of the complainants.

And, for further answer, the defendant denies each and every charge and allegation in the complainants' bill contained not herein expressly admitted, and asks that the complainants may be held to strict proof of the same.

And, by way of cross-bill, this defendant alleges that the pretended title or claim set up by complainants to the lot described in their said bill casts a cloud upon the superior legal and equitable title of this defendant and depreciates the value thereof and prevents this de-
32 fendant from selling the same for anything like its intrinsic value; therefore this defendant prays for judgment and decree annulling and setting aside the pretended title or claim of complainants, and vesting the same in this defendant, and for all such orders, judgments, and decrees as the nature of the case may require to metes out equal justice between the parties.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is, by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence

dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ISAAC L. LYON.

CHANDLER, CARLETON & ROBERTSON,
Solicitors for Def't.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Before me, John Graves, a commissioner of the circuit court of the United States for the eastern district of Michigan, came and personally appeared Isaac L. Lyon, a resident of said district, to me known to be the person whose name is signed to the foregoing answer, and who being by me first duly sworn, deposes and says that all the facts alleged in the foregoing answer are true so far as the same are stated of his own knowledge, and so far as the same are stated on the information of others, he believes them to be true.

In testimony whereof I have hereto set my hand and affixed my seal of office at Detroit, the 8th day of September, A. D. 1873.

JNO. GRAVES, U. S. COMMISSIONER FOR THE EASTERN DIS'T MICH.

JOHN GRAVES,
United States Commissioner for the Eastern District of Michigan.

(Indorsed:) Suits in San Antonio vs. Isaac L. Lyon.

33 *Exhibit A.*

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that I, Isaac L. Lyon, of the said county of Bexar & State of Texas, have made, conditioned, and appointed, and do by these presents make, constitute, and appoint W. A. Bennett, of the county and State aforesaid, my true and lawful attorney in fact to take charge of, possess, and control all my property and estate of every sort, real, personal, and mixed, choses in action and assetts, and for me and in my name to hold and control, or sell, transfer, and convey the same to whomsoever and for what consideration soever, and upon whatever terms and manner he may deem fit and best for my interest, hereby authorizing my said attorney to collect and receipt for all debts, rents, and profits due or to become due to me; also, to sell and convey, by good and sufficient deeds in fee simple, any and all real estate I may and do own in the county aforesaid; also, to collect the dividends and vote in my stead, and in all respects represent me in my gas light stock in the city of San Antonio, all matters pertaining to the management of the same, and to sell said stock, and transfer the same, upon the books of the company, as required by their charter and by-laws, and to
34 do and perform all the aforesaid acts and things, and to do all manner of acts and things touching my estate aforesaid that I could do in person; and I hereby ratify and confirm and hold myself at all times bound to ratify and confirm all the acts and doings of my said attorney, to be done and performed in the premises aforesaid, as fully and perfectly, and to all intents and purposes, as if done by me in my proper person.

In testimony whereof I have hereunto subscribed my name this 22nd day of May, 1861.

I. L. LYON

In presence of—
P. M. MEANES,
WM. GROESBECK.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, Henry M. Smyth, to me well known, who, being by me duly sworn, says that W'm P. Meanes and W'm Groesbeck, whose names are signed as witnesses to a power of attorney given 22nd May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached, reside out of the State of Texas.

H. M. SMYTH.

Sworn to and subscribed before me this 18th day of March, A. D. 1867.
[L. S.] EDWARD MILES,
Notary Public, B. C.

35 THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, John C. French and E. A. Florian, to me well known, who, being by me duly sworn, depose and say that they are disinterested witnesses in the matter of the power of attorney given 22nd May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached; that they are well acquainted with the handwriting of I. L. Lyon, who executed the said instrument, and of W'm Groesbeck, one of the witnesses to the same, and recognize the same thereto signed to be the genuine signatures of the said I. L. Lyon and W'm Groesbeck.

JOHN C. FRENCH,
E. A. FLORIAN.

Sworn to and subscribed before me this 18th day of March, A. D. 1867.
[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

I, Peyton Smyth, county clerk of said county, do hereby certify that the foregoing instrument of writing, with its certificate of authentication, was filed for registration in my office the 21st day of March, 1867, at 5 o'clock p. m., and duly recorded the 22nd day of March, 1867, at 10 o'clock a. m., in the records of said county, in book W, No. 2, on page No. 106 & 107.

36 Witness my official seal and signature at office in San Antonio the day and year last above written.

[L. S.] PEYTON SMYTH, *C. C., B. Co.*

THE STATE OF TEXAS,
County of Bexar:

I, Mortimer Slocum, clerk of the district court of said county, do hereby certify that the above and foregoing is a true and correct transcript of the original as recorded among the records of said county, in book W, No. 2, on page No. 106 & 107.

Witness my official seal and signature at office in San Antonio, this 17th day of July, A. D. 1873.

M SLOCUM,
Clerk D. C., B. Co.,
By THEO. BALDUS, *Deputy.*

37 *Replication.*

And afterwards, replication is indorsed "70 chancery. In U. S.

cir't court, Austin. Jesus & Katharine Hernandez vs. Isaac L. Lyon. Replication. Filed Nov. 3, 1873. M. Hopkins, cl'k," which is in words, to wit:

In U. S. circuit court for west. dist. Texas, at Austin.

JESUS & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70. In chancery.

The replication of Jesus & Katharine Hernandez, plaintiffs, to the answer of Isaac L. Lyon, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, *saith* that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by their said bill they hath already prayed.

WALTON & GREEN,
Atty's for Repliants.

And afterwards, the following entry appears: "February 5, 1874. Continued by court."

38 And afterwards, the following entry appears upon the chancery minutes:

Trial entry.

SATURDAY, *February* 6, 1875.

Hon. W. B. Woods, presiding.

JESUS & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70. Chancery.

On this day came the solicitors of the complainants, Waelder & Upson & W'm M. Walton, and the solicitors of def't, Chandler, Carleton and Robertson, and the case was submitted to the court on the pleadings and evidence, an' the same held for consideration by the court.

And afterwards, Monday morning, Feb. 8, 1875, Hon. W. B. Woods, circuit judge, Hon. Thomas H. Duval, district judge; Hon. W. B. Woods, presiding.

JESUS HERNANDEZ & KATHARINE HERNANDEZ,
complainants,
against
ISAAC L. LYON, DEFENDANT. } No. 70. Chancery.

In the circuit court of the United States for the western district of Texas, at Austin, January term, anno Domini 1875.

At this term of the court this cause came on for final hearing on the

pleadings and proofs, and being argued by counsel and submitted to the court it is therefore here and now ordered, adjudged, and decreed by the court as follows, viz: That the said defendant, Isaac L.
39 Lyon, do within sixty days from and after the enrolment of this decree, by himself, or by his legally-constituted attorney in fact, make and deliver to the said complainants a good and sufficient deed, conveying in fee-simple to Katharine Hernandez, one of the complainants, the following-described lot or parcel of land, situate in the city of San Antonio, in Berar County, Texas, the same being mentioned in the bill, and by metes and bounds described as follows: fronting on the west side of Saladad street, about twenty-seven varas, the same being bounded as follows: on the north by a lot of ground formerly owned and improved by Emil Abat; on the west by a picket-fence, being the same lot purchased by the said Lyon from Lino Arocha and wife, on the 16th August, 1861. And it is further ordered, adjudged, and decreed by the court, that if the defendant, Isaac L. Lyon, shall fail so to execute and deliver said deed as herein ordered, then that the clerk of this court, or his successor, in the event of the death or removal or resignation of the present incumbent, do proceed to execute the said conveyance to the said Katharine Hernandez, and deliver the same to the said complainants. And it is further ordered, adjudged, and decreed by the court that the complainants have the relief prayed for in the bill against the judgment at law rendered in this court on the 5th day of June, 1873, in the favor of the said defendant, Isaac L. Lyon, and against the complainants, adjudging to him the lot of land here-
40 inbefore described, and that the said Isaac L. Lyon be, and he is hereby, perpetually enjoined, either by himself, his attorneys, agents, or servants, from sueing out or prosecuting any writ of possession upon the said judgment at law, to secure or obtain the possession of the said lot of land mentioned in this decree, and from setting up or asserting any claim or title to said premises against the said complainants, or any person claiming the same by, through, or under them.

It is further ordered that the defendant, Isaac L. Lyon, pay all costs in this behalf expended, to be taxed by the clerk of this court.

Enrolled, signed, and sealed on this the 9th day of February, 1875.

W. B. WOODS, [SEAL.]
Judge.

And thereupon defendant gave notice of appeal, and afterwards the following entry appears, to wit:

WEDNESDAY MORNING, *February* 17, 1875.

JESUS & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70.

FRANZ & CATHARINE POLLOCK
vs.
ISAAC L. LYON. } No. 72.

In these causes came the solicitor of the defendant, F. W. Chandler, and moves the court to fix the amount of the appeal-bonds to be given by the defendant in these enumerated cases, and the appeals not being suspensive the court fixed the amount of the bond to be given in each case at five hundred dollars. On motion of defendant's solicitor', F. W.

Chandler, F. Carleton and John W. Robertson were permitted to go on the bonds as sureties, being relieved from the rule in these cases.

41 Petition for appeal is indorsed: "No. 70. Jesus and Katharine Hernandez vs. Isaac L. Lyon. Petition filed Feb. 17, 1875." And is in words to wit:

Petition for allowance of appeal.

No. 70.

JESUS & KATHARINE HERNANDEZ, complainants, *vs.* ISAAC L. LYON, DEFENDANT. } No. 70. Chancery.

In the circuit court of the United States of America for the western district of Texas, holding sessions at the city of Austin.

To the honorable the circuit judges of the circuit court of the United States for the western district of Texas, at Austin:

The petition of Isaac L. Lyon, a resident citizen of the county of Wayne and State of Michigan, respectfully represents that during the present term (January term, 1875) of the circuit court of the United States for the western district of Texas, at Austin, to wit, on the 8th day of February, A. D. 1875, a final decree was rendered by said court in a certain cause then pending in said court in chancery, wherein Jesus Hernandez and Katharine Hernandez were complainants and Isaac L. Lyon was defendant, as by the proceedings in said cause now remaining of record in this court will fully appear; that the decree so rendered was erroneous, imperfect, and contrary to the rights of said defendant, and the principles of equity in several respects: first, in rendering a judgment and decree in favor of the complainants directing the defendant to convey the land described in complainants' bill of complaint to the complainants; and, second, for not dismissing complainants' said bill of complainant, dissolving the injunction prayed for in said bill, and

42 in not rendering judgment and decree for the defendant, and in not doing full and complete justice to the defendant in other respects, as will appear by reference to the proceedings in said cause; for which said errors and irregularities, and such others as may appear in the proceedings of said cause which may be cognizable by the appellate court, the said defendant, Isaac L. Lyon, claims an appeal from the said decree of said circuit court to the Supreme Court of the United States at the next term at Washington. Whereupon your petitioner prays your honors to grant him such appeal upon the usual terms.

CHANDLER, CARLETON & ROBERTSON,
Counsel for Petitioner.

Appeal allowed.

T. H. DUVAL,
U. S. Judge.

Bond for appeal is endorsed, "Filed Feb. 17, 1875. M. Hopkins, cl'k," and is in words to wit:

Bond for appeal.

UNITED STATES OF AMERICA,
Western District of Texas:

Know all men by these presents that we, Isaac L. Lyon, a resident

citizen of the county of Wayne and State of Michigan, F. W. Chandler, Fred. Carleton, J. W. Robertson, and R. H. Peck, all resident citizens of the county of Davis and State of Texas, are held and firmly bound unto Jesus Hernandez and Katharine Hernandez in the full and just sum of five hundred dollars, to be paid to the said obligees, their certain attorneys, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents,
43 sealed with our seals & dated this 17th day of February, A. D. 1875.

Whereas at a term of the circuit court of the United States for the western district of Texas, at Austin, in a cause pending in said court, wherein Jesus Hernandez and Katharine Hernandez were complainants, and Isaac L. Lyon, one of the obligees herein, was defendant, said cause being numbered (70) seventy on the chancery docket, a decree was rendered in favor of said complainants, directing the defendant to convey to said complainants certain real estate in their said bill described, said decree being entered on the 8th day of February, 1875, a day during the term of said court commencing on the 1st Monday of January, A. D. 1875, and the said Isaac L. Lyon having obtained an appeal to reverse the decree in said cause rendered and entered as aforesaid, and also a citation directed to the said obligees herein, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington on the 2nd Monday in October next:

Now the condition of the above obligation is such that if the said obligor, Isaac L. Lyon, shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; otherwise to remain in full force and effect.

ISAAC L. LYON, [SEAL.]
By F. W. CHANDLER,
Agent.
F. W. CHANDLER. [SEAL.]
FRED. CARLETON. [SEAL.]
R. H. PECK. [SEAL.]
J. W. ROBERTSON. [SEAL.]

Approved.
T. H. DUVAL,
U. S. Judge.

44 *Citation on appeal & return.*

UNITED STATES OF AMERICA:

In the United States circuit court, 5th circuit, western district of Texas, sitting at Austin.

ISAAC L. LYON, APPELLANT,
vs.
JESUS HERNANDEZ & KATHARINE HERNANDEZ, appellees.

The President of the United States to Jesus Hernandez and Katharine Hernandez, or their attorneys of record, Jacob Waelder or William M. Walton:

You are hereby cited and admonished to appear at the next term of

the Supreme Court of the United States, to be held at Washington on the second Monday of October next, to show cause, if any there be, why the decree rendered in your favor by the circuit court of the United States, sitting in chancery at Austin, in said district, in a certain cause depending between Jesus Hernandez and Katharine Hernandez as complainants, and Isaac L. Lyon, defendant, numbered 70 on the chancery docket of said court at Austin, should not be reversed, and speedy justice be done to the parties in that behalf, in pursuance of an appeal obtained by the said Isaac L. Lyon, the said defendant, according to his petition, filed in the circuit court of the United States for the western district of Texas, at Austin.

45 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal our said circuit court at Austin this 28 day of September, A. D. 1875.

[SEAL.] T. H. DUVAL,
U. S. Judge.

Test with seal of court:

M. HOPKINS, *Clerk.*

The marshal's return is endorsed thereon, to wit:

Came to hand Sept. 28th, 1875. Executed Sept. 29th, 1875, by delivering to W. M. Walton, one of the attorneys of record named within, in person, a true copy of this citation of appeal.

T. F. PURNELL,
U. S. Marshal,
Per H. P. PURNELL, *Dep'y.*

46 PLAINTIFFS' TESTIMONY.

Deposition of Julius Hoyer & Frederick Haneisen, endorsed "Rec'd from p. office at Austin & filed Dec. 31, 1873. M. Hopkins, cl'k."

Deposition of Julius Hoyer & Frederick Haneisen.—Filed Dec. 31, 1873. *M. Hopkins, cl'k.*

Depositions and answers of Julius Hoyer and Frederick Haneisen Filed Dec'r 31, 1873.

Which are in words following:

JESUS HERNANDEZ AND KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to Julius Hoyer and Frederick Haneisen, witnesses in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katharine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants:

Interrogatory 1. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either, and which of them, and how long have you known them, respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 2. Have you or not held, and do you or not now hold, any official position in the city of San Antonio or in the county of
47 Bexar? If yea, state what official position you have held and now hold in said city or county, and how long you have held the same. State also what your duties are or what duties you perform in such position.

Int. 3. Do you know the lot of land situated in the city of San Antonio, at the corner of Solidad street and the fourth cross-street or alley (meaning east and west) north of the main plaza of said city? If yea, state in whose actual possession said lot has been since the year 1866, and the month of April of that year; what was then its value; who has occupied it since that time; and whether or not such occupation was open and notorious.

Int. 4. Has, or not, the said Lyon, the defendant in this case, paid any taxes on said lot since the year 1865? If you say that you have been and are engaged in the collection of taxes, then please examine the tax-lists or rolls of your office, and state whether or not the said Isaac L. Lyon has paid any, and what, taxes since the time mentioned. And if you say that the said Lyon has not paid any taxes on said
48 lot since 1865, you will then state whether or not any person has paid the taxes assessed thereon. State who has paid the State, county, and city taxes assessed on said lot for each year since the year 1865. Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Int. 5. Do you know any other matters or things touching the matters in issue in this cause, which may tend to the benefit or advantage of the said complainants therein? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

We, the counsel & solicitors of the def't in cause No. 70, chancery, in U. S. circuit court, west. district Texas, of Jesus & Katharine Hernandez against Isaac L. Lyon, hereby waive service, time, copy, and commission of and on the foregoing interrogatories, and agree that
49 the same may be answered instanter before any officer authorized in Texas to take depositions; and that the answers, when taken, may be read in evidence on the trial of said cause, free of objection as to formality of taking and returning, but subject to all objections as to their admissibility or the competency of the witnesses. And we further agree that the said answers may be read, under like waiver and restrictions, in causes 71, 72, 73, 74, 75, & 76, wherein the said Isaac L. Lyon is defendant, involving like questions as this cause, except as to the value of rents & improvements in cases 71, 72, 73, 74, 75, & 76, pending in the same court.

This agreement is made to avoid the making of useless cost.

CHANDLER, CARLETON & ROBERTSON,
Solicitors for Def't, Lyon.

JESUS HERNANDEZ & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70. In chancery.

Cross-interrogatories to be propounded to Julius Hoyer and Frederick Haneisen.

50 Cross-int. 1st. (To both of said witnesses.) If, in answer to the direct interrogatories, you have stated that you know the property described therein, and you have further stated that you know the value of the lots in April, 1866, please state what would be a fair value for the lots now, as compared with other property in that part of the city of San Antonio. Are not the lots, or lot, a corner-lot; and is it not true that corner-lots sell for more than other lots in the same vicinity?

Cross-int'y 2nd. (To both of said witnesses.) State whether or not the defendant, Isaac L. Lyon, has been in the city of San Antonio since the first day of January, 1865.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

Suit pending in the circuit court of the United States for the western district of Texas.

JESUS HERNANDEZ AND KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70.

Answers and depositions of Frederick Haneisen and Julius Hoyer, both residing in the city of San Antonio, in the county of Bexar, State of Texas, to the accompanying interrogatories, propounded to
51 them in the above-entitled cause, taken before John Rozenheimer, a notary public in and for the county of Bexar, State of Texas, in accordance with the accompanying commission or agreement.

Answers of the witness Frederick Haneisen:

To the 1st interrogatory he answers: I know the complainants. One of them, Katharine Hernandez, I have known for about 10 years; and the other, Jesus Hernandez, I have known since he is married to Katharine, whose former name was Katharine Wefing. I am not acquainted with the defendant Isaac, L. Lyon, and never was.

To the 2nd interrogatory he answers: I have held, and do now hold, official positions in the city of San Antonio and county of Bexar. In the years 1864 and 1865 I was deputy-postmaster, and since October, 1870, I have been, and am yet, deputy sheriff of Bexar County. The duties which I do perform, and have performed continuously since my appointment by Sheriff Bonneit as his deputy, in October, 1870, consist in the collection of the State and county taxes for Bexar County.

To the 3rd interrogatory he answers: I do know the lot described in the 3rd interrogatory; and, of my own personal knowledge, I can
52 only say that the said lot has been in the actual possession of Catharine Hernandez and Jesus Hernandez since 1867, and that such occupation was continuous, open, and notorious. I do not know who was in actual possession of said lot previous to 1867. The value of the said lot in 1866 was, to my best knowledge and belief, $500.00.

To the 4th interrogatory he answers: The defendant, Lyon, has not paid any taxes on said lot since the year 1865. I have examined the

tax-lists or rolls of the sheriff's office of Bexar County, and find that since 1865 said Lyon has not paid any taxes at all; in fact, I cannot even find his name upon any of the tax-lists or rolls of Bexar County since 1865. Taxes on said lot were paid by Katharine Hernandez. The State and county taxes on said lot were paid regularly since 1867 by Katharine Hernandez; her husband acting as her agent in the payment of said taxes. These facts I have from personal knowledge and from the examination of the tax-lists or rolls of Bexar County.

To the 5th interrogatory he answers: I do not.

To the 1st cross-interrogatory he answers: To the best of my
53 knowledge and belief $800.$\frac{00}{100}$ coin would be a fair value now for the said lot, as compared with other property in that part of the city of San Antonio. The lot in controversy is a corner lot, and usually corner lots do sell for more than other lots in the same or any other vicinity.

To the 2nd cross-interrogatory he answers: I do not know whether or not the defendant, Isaac L. Lyon, has been in the city of San Antonio since the first day of January, 1865.

C. F. HANEISEN,

Sworn to and subscribed before me this 29th day of December, A. D. 1873.

JNO. ROSENHEIMER,
Notary Public, Bexar County.

Answers of the witness Julius Hoyer:

To the 1st interrogatory he answers: I do know the complainants since over ten years; but with the defendant I have never been acquainted.

So the 2nd interrogatory he answers: I am and have been acting as city collector for the city of San Antonio from the month of January, 1862, to the present time, except only from January to end of October, 1867, my duties in that position were to collect the tax on real
54 estate and personal property within the limits of said city of San Antonio.

To the 3rd interrogatory he answers: I do know the lot in controversy, but I do not know who was in actual possession of the same since 1866.

To the 4th interrogatory he answers: The name of Isaac L. Lyon, the defendant, does not appear upon any roll since 1865 as a tax-payer of the city of San Antonio. The lot in controversy was first assessed by M'r's Katharine Wefing, now Katharine Hernandez, in the beginning of the year 1868, for seven hundred dollars, and has since then been regularly assessed and paid by her.

To the 5th interrogatory he answers: I can state no more, as all I further know came to my knowledge as a notary in taking depositions.

To the 1st cross-interrogatory he answers: I do believe that the value of the lot from 1866 to 1868 has not increased much. For the year 1873 the lot was assessed at $1,000.$\frac{00}{100}$, which assessment was approved by the board. A corner lot generally sells better and a little higher than adjoining lots of equal size.

To the 2nd cross-interrogatory he answers: Not to my personal knowledge.

JULIUS HOYER.

55 Sworn to and subscribed before me this 29th day of December, A. D. 1872.

JNO. ROSENHEIMER,
Notary Public, Bexar County.

STATE OF TEXAS,
County of Bexar:

I, John Rosenheimer, a notary public in and for the county of Bexar, State of Texas, do hereby certify that the foregoing answers of Frederick Haneisen and Julius Hoyer, the witnesses before named, were made before me, and were sworn to and subscribed before me by the said witnesses, respectively.

Given under my hand and official seal, at office, in San Antonio, this 29th December, 1873.

[L. S.] JNO. ROSENHEIMER,
Notary Public, Bexar County.

56 PL'FF'S TESTIMONY.

Deposition of G. Friesleben, endorsed, "Rec'd from P. office at Austin, & filed January 4, 1874," in words to wit:

Depositions and answers of G. Freisleben. Filed January 4th, 1874. *M. Hopkins, cl'k.*

Deposition of G. Friesleben.

Which are in words as follows:

JESUS HERNANDEZ & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70. In chancery.

The defendant, by his counsel, excepts and objects to each and every quetions in the 3rd, 4th, & 5th direct interrogatories and the answers thereto, if in the affirmative, because the same are illegal, irrelevant, and inadmissible as evidence in this cause. And to the 7th and last direct interrogatory, because all the questions are leading, and because the witness is called upon to state his belief as to the facts and. for aught we know, the law controlling the issues in this case; and the defendant will move the court to suppress said interrogatories and answers upon the trial of this cause.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant

57 And the defendant propounds the following cross-interrogatories to the said G. Freisleben:

Cross-int'y 1st. If in answer to the 2d direct interrogatory you have stated that you know the lot and property therein described, and that the complainants have occupied it since 1866, please state what would be a fair rent for said property for each year since 1866 to the present time? Do you know what such property has usually rented for per annum in San Antonio from 1866 to the present time? Please be particular and state what would be a fair rent for the place for each year.

Cross-int'y 2d. If in answer to the 6th direct interrogatory you have stated that complainants have made improvements on said lot, please be particular and give the date when each particular part or piece of improvements were put upon said lot by complainants, and state what kind of material said improvements were made out of; if they have built any house or houses on said lot or any additions to any
58 house or houses on the lot, please state the size of each room and

the material that they were made of; was it adobe or rock, or part one and part in the other; what were the roofs covered with? If they built any fence on the lot, please give the date when they built it. What is the present condition of the house upon said lot, and what is the present condition of the fence and outhouses on said lot. Are they in good or bad repair at this time? Please state the number of rooms in each house on the lot, and the size of each room put there by complainants, and how they are finished. If you say you don't know enough of the condition of the improvements on said lot to answer the foregoing questions advisedly, please go over and examine the property before you finish your answer. We simply want the truth about the matter, after you have examined the property.

Cross-int'y 3rd. What is the lot now worth with the improvements on it when the complainants took possession of it, without estimating the improvements put there by complainants? I mean, to estimate it as other property of that character is selling or estimated in San
59 Antonio at.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

JESUS HERNANDEZ AND KATHARINE HERNANDEZ *vs.* ISAAC L. LYON. } In chancery.

Interrogatories to be administered to G. Freisleben, a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katharine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either, and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Int. 2. Do you or not know the lot of land at the corner of Soledad street and the fourth street or alley (running east and west)
60 north of the main plaza in the city of San Antonio, in the county of Bexar, Texas? If yea, state in whose actual possession has said lot been since the year 1866; who has occupied it since that year, and whether such occupation was open and notorious, and under what claim of right, if any, the party or parties occupied the same since that time. Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Int. 3. Have you or not held, and do you or not now hold, any official possession in the city of San Antonio, Texas? If yea, state what official position you have held and now hold in said city, and how long you have held the same.

Int. 4. State what your occupation or profession is, aside from any official position you may have held or hold, and how long you have been engaged in such occupation or profession.

Int. 5. Do you know or not how, and from whom, and in what manner, the party or parties occupying the lot aforesaid acquired the same or possession of the same? If yea, then state whether by pur
61 chase or otherwise, and if by purchase, what was the consideration or purchase-money they paid for the same, to whom it was

paid, and in what capacity the person making the sale and receiving the purchase-money was acting; whether for himself or some other person, and if for another person, what person. Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 6. If you say, in answer to the foregoing interrogatories, that the complainants in this case have occupied said lot since 1864, and that they, or one of them, purchased the same, you will then state whether or not they have or whether or not either of them has made improvements upon said lot. If yea, state the time when such improvements were made; their character and value at the time they were made, as well as their present value. Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Int. 7. Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or
62 advantage of the said complainants therein? If yea, set forth the same and all the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

We, the counsel & solicitors of the def't in cause No. 70, chancery, in U. S. circuit court west. dist. of Texas, Jesus and Katharine Hernandez against Isaac L. Lyon, hereby waive service, time, copy, and commission of and on the foregoing interrogatories, and agree that the same may be answered instanter, before any officer authorized in Texas to take depositions, and that the answers when taken may be read in evidence on the trial of said cause, free of objection as to formality of taking and returning, but subject to all objections as to their admissibility or the competency of the witness; and we further agree that the same answers may be read under like waiver and restrictions in causes No. 71, 72, 73, 74, 75, 76, wherein the said Isaac L. Lyon is defendant, involving like questions, as this cause is pending in the same court.
63 This agreement is made to avoid useless cost.

Solicitors for Def't.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared G. Freisleben, of said county, to me well known, who, being by me duly sworn to true answers make to the interrogatories propounded to him in a suit now pending and at issue in the circuit court of the United States for the western district of Texas, No. 70, on the docket thereof, wherein Jesus Hernandez and Katharine Hernandez are plaintiffs and Isaac L. Lyon is defendant, responds as follows, to wit:

To int. 1st he answers: I know complainants since 1856; I knew defendant in 1859, 1860, and 1861.

To int. 2nd: I know the lot; it has been in actual and open possession of M'r's Hernandez, formerly Wefing, since 1866, who bought the lot.

To int. 3rd: I am city surveyor & engineer of the city of San Antonio. I held the position from 1855 to 1869, and from Nov'b'r, 1872, to the present time.

64 To int. 4th: My profession is surveyor & engineer, in which profession I have been engaged in the city of San Antonio since 1852.

To int. 5th: The parties occupying the lot purchased the same from I. L. Lyon, acting by his attorney in fact, I. A. Paschal, for the sum of $700, specie, which money was used by said Paschal in paying the debts of said Lyons.

To int. 6th: Complainants have occupied the lot since 1866, and made improvements upon it in 1866, a large dwelling-house of hard rock with awning and gallery, a kitchen, a well and fence; the value of said improvements is about $5,000.00, specie.

To int. 7th: I answered all I know.

To 1st X-int: The vacant lot would not have brought any rent; a fair rent for the lot occupied by complainants would be $30 for each year.

To 2nd X-int: All the improvements were made in 1866; the dwelling-house is 43½ feet in front and 40 feet in depth, of hard rocks, containing 4 large rooms. The house is covered with shingle, and has an awning in front and a gallery in the rear. All doors and windows have blinds.

65 The kitchen is 16 by 20½ feet, of soft rocks, with hard rock foundation, covered with shingles. All the buildings, the fences, and the well are in good condition.

To 3rd X-int: The lot with improvements is worth $6,000.00, specie; the lot without improvements is $1,200.00, specie.

G. FREISLEBEN.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness G. Freisleben were taken, sworn to, and subscribed before me this 30th day of December, A. D. 1873.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

66 Deposition of John Fries is endorsed, "Received from p. office at Austin, & filed January 4, 1874. M. Hopkins, cl'k."

Deposition of John Fries, pl'ffs' witness.

JESUS HERNANDEZ AND KATHARINE HERNANdez
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to John Fries, a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas *of Texas*, wherein Jesus Hernandez and Katherine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1st. Do you know the parties complainants and defendant in the title to these interrogatories named, or either, and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Int. 2. The complainants have filed their bill of complaint against the said defendant to perfect what they believe to be their equitable title to the lot or piece of land in the city of San Antonio, in Bexar County,

67 Texas, which is described as follows, to wit: a lot on the northeast corner of Soledad street and of the fourth cross-street or alley (running east and west) north of the main plaza of the city of San

Antonio, beginning at the northeast corner of a lot of P. C. Taylor, on Soledad street; thence with the line of Soledad street N. 2¾° W. 27¼ varas to the corner of the above-mentioned alley; thence with said alley N. 88 west 27¾ varas; thence S. 5¾ E. 27⅛ varas; thence S. 87½ E. 27¾ varas to the place of beginning. Do you or not know said lot? If yea, how long have you known the same? And if you say that you have known said lot since the year 1866, then state who, if you know, has been in possession thereof since the month of April of that year? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 3. Did, or not, Katherine Hernandez, one of the complainants, live upon said lot from the said month of April, 1866, until her marriage with the said Jesus Hernandez, her co-complainant, and have or not the said Jesus and Katherine lived upon said lot since their marriage? State the time of their marriage, if you know, and declare the
68 truth and your utmost knowledge, remembrance, and belief herein.

Int. 4. State whether or not the said Katherine purchased the said lot from I. A. Paschal at the time of, or shortly before, taking possession thereof and occupying the same. State, also, whether or not the said Paschal was acting as the agent or attorney for the defendant in making sale of the said lot to the said Katherine.

Int. 5th. State whether or not you have at any time had one or more conversations with said Lyon in relation to the said lot. If yea, what did he say to you in relation to the same, his desire to sell it, and who was his agent or attorney to make sale thereof? State, also, when and where such conversation or conversations occurred, and the manner in which the said Lyon came to speak of said lot. Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Int. 6. Did you or not meet the said Lyon in the city of Monterey, in Mexico, in the year 1865? If yea, then state whether or not you
69 had any conversation with him at that place in relation to said lot, and what such conversation was. State the time of such conversation as near as you can.

Int. 7. Do you know or not what said Katherine paid for said lot? If yea, state what she did pay, when, to whom, and the kind of currency in which she made such payment.

Int. 8. State whether or not the possession of Jesus and Katherine Hernandez since their marriage, and the possession of said Katherine before her marriage, was open and notorious, and whether or not she, the said Katherine, has always claimed said lot as her own property since her purchase and taking possession of the same. Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 9. Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainants therein? If yea, set forth the same and all the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief,
70 as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER and UPSON,
Att'ys for Complainants.

We, the counsel & solicitors of the def't in cause No. 70, chancery, in U. S. circuit court west. dist. Texas, of Jesus Hernandez & Katherine Hernandez against Isaac L. Lyon, hereby waive service, time, copy, and

commission of and on the foregoing interrogatories, and agree that the same may be answered instanter before any officer authorized in Texas to take depositions, and that the answers, when taken, may be read in evidence on the trial of said cause, free of objection as to formality of taking and returning, but subject to all objections as to their admissibility or the competency of the testimony; and we further agree that the said answers may be read under like waiver and restrictions in causes 71, 72, 73, 74, 75, & 76, wherein the said Isaac L. Lyon is defendant, involving like questions, as this cause is pending in the same court. This agreement is made to avoid the making of useless cost.

CHANDLER, CARLETON & ROBERTSON,
Solicitors for Def't Lyon.

71 JESUS HERNANDEZ & KATHERINE Hernandez *vs.* ISAAC L. LYON. } No. 70. In chancery.

Defendant excepts and objects to each and every question in the 4th direct interrogatory-in-chief and the answers thereto propounded to the witness John Fries, because there is no predicate in complainant's bill to admit the testimony sought to be elicited by the questions in said interrogatory, because the same are leading, and because they are illegal, inadmissable, and irrelevant testimony in the case.

To so much of said interrogatory as seeks to prove by parole that I. A. Paschal was acting as agent or attorney of the defendant in the sale of the lot inquired about, because the complainants in their bill rely alone upon written authority from defendant to said Paschal to sell said lot, therefore no parole evidence of authority in Paschal is admissible in evidence in this case.

72 And defendant especially excepts and objects to each and all the questions in the 5th and 6th direct interrogatories and answers thereto, if in the affirmative, for each and all the objections to the 4th direct interrogatory, and because the interrogatories seek to prove statements and admissions of the defendant in relation to the authority Paschal had to sell the lot, and the complainants have not laid the legal predicate to admit such testimony.

And to the 9th and last direct interrogatory, because the same is leading, and calls upon the witness to state his belief in relation to the matters at issue in this case.

And the defendant will move to suppress said interrogatories and answers thereto upon the trial of this cause.

CHANDLER, CARLETON & ROBERTSON,
Atty's for Defendant.

And the defendant propounds the following interrogatories to the witness, John Fries:

Cross-int'y 1st. If, in answer to the direct interrogatories, you have stated that you have known the tract or lot of land described in the 2nd direct interrogatory, please state what would be a fair rent for said
73 property per month for each year since the complainants have had possession of it. Please don't forget or neglect to state the value of the rent of *of* said property for each year since the complainants have occupied it.

Cross-int'y 2nd. When and where did you last see the defendant,

I. L. Lyon. Please be particular and give the date when you last saw him.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

Answers of John Fries to interrogatories and cross-interrogatories above.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared John Fries, of said county, to me well known, who, being by me duly sworn to true answers make to the interrogatories propounded to him in a suit now pending and at issue in the circuit court of the United States for the western district of Texas, No. 70, on the docket thereof, wherein Jesus Hernandez and Katherine Hernandez are plaintiffs and Isaac L. Lyon is defendant, respon's as follows, to wit:

To int. 1st he answers: I have known Lyon since 1857 or '58;
74 Jesus Hernandez since about five years; Katherine Hernandez at least since ten to twelve years.

To int. 2nd. I know said property; I have know' said lot since 1850. I cannot state the precise time, but I do know that Catherine Hernandez took possession in 1866.

To int. 3d. I know they took possession of said property, and have been living on it since they took possession. Can't state the time of their marriage.

To int. 4th. I have no other knowledge than M'r's Catherine Hernandez' own statement in regard to her purchase of the lot. To my knowledge, I. A. Paschal was acting as agent for Lyon.

To int. 5th. I may have heard several conversations, but I do remember distinctly when Lyon told me, in case I could find a purchaser for said lot, to apply to Paschal, who was his agent, as in preceding answer. Shortly before Lyon left the city of San Antonio he wanted to sell the said lot to me, and requested me at the same time to assist him to a fair purchaser, and that he would appoint I. A. Paschal his agent.

To int. 6th. Yes, I did. I believe that at that time he again spoke to me about said lot.

75 To int. 7th. I do know positive, but think she paid about six hundred dollars; that I do not know.

To int. 8th. She has held open possession since the time of her purchase and always claimed the property as her own.

To int. 9th. I do not know any more about it.

To X-int. 1st. The vacant lot unimproved, as I have known it when Katherine Hernandez took possession thereof, may have had a rental value of two to three dollars a month on account of an old *jakall* standing thereon; since the building by the present owners was made, viz, 1867, the property has had a rental value of about 25 or 30 dollars per month; this, in my opinion, would have been a fair rent for every year since they finished it.

To X-int. 2nd. I saw him the last time in the city of Monterey, Mexico, in 1865, but cannot remember the date.

JOHN FRIES.

STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature, that the foregoing an-

swers of the witness, John Fries, were taken, sworn to, and subscribed before me this 29th day of December, A. D. 1873.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

76 COMPLAINANTS' TESTIMONY.

Deposition of E. A. Florian is indorsed, to wit:

"Received from P. office at Austin & filed January 4, 1874. M. Hopkins, cl'k." Which is in words, as follows:

Deposition of E. A. Florian.—Filed January 4th, 1874. M. Hopkins, cl'k.

Deposition of E. A. Florian.

JESUS & KATHARINE HERNANDEZ *vs.* ISAAC L. LYON. } No. 70.

Suit pending in the hon. circuit court at Austin, Texas, in and for the western dist. of Texas.

Answers and depositions of E. A. Florian, a resident of Bexar County, taken before Alex. E. Sweet, a notary public of said county of Bexar, in accordance with the agreement attached to the interrogatories herewith propounded to said witnesses.

To the 1st int. he answers: I do not know plaintiffs to the suit. I know the defendant, I. L. Lyon. I have known him since the early part of 1859.

To the 2nd int. he answers: In 1859 the San Antonio Gas Company was organized. I. L. Lyon was one of the stockholders and directors, and has built gas-works under contract with the company. I was
77 treasurer of the company, and in that capacity had many business transactions with I. L. Lyon.

To the 3rd int. he answers: I. L. Lyon lived in San Antonio from 1859 until sometime in 1861, when he left for Mexico. From the time the gas-works went into operation, he was engaged as superintendent of said gas-works. He does not live in San Antonio now, and I do not know where he lives at present.

To the 4th int. he answers: I. L. Lyon, when he left San Antonio owned six hundred shares of stock in San Antonio Gas Company, and some lots in "Beck's addition," in the city of San Antonio. Upon the gas stock up to the time he left, only fifty-five per cent. had been paid, and the stock was subject to any further calls or assessments up to the par value of each share which was one hundred dollars.

To the 5th int. he answers: W. A. Bennett was Lyon's agent and attorney-in-fact, from 1861 to some time in 1865. I do not know under what authority Bennett acted, but he was the known and acknowledged agent of I. L. Lyon, until I. A. Paschal became his agent in 1865.

To the 6th int. he answers: Paschal acted under a letter, a copy
78 of which is attached to the X-interrogatories now propounded to me. The letter is dated Aug. 24th, 1865. I was one of the witnesses to prove the signature of Lyon and its contents in Lyon's handwriting. W. A. Bennett, Jno. C. French, and myself proved up the letter. Our oaths are not attached to the copy now furnished. The letter is recorded in the records of Bexar County. Where the original is I

cannot say, though I have looked and inquired for it, but cannot find it.

To the 7th int. he answers: I know that Bennett was regarded as the agent or attorney of Lyons until the summer of 1865, when he (Bennett) left here. After that Paschal was regarded as such agent. How Lyon regarded him I cannot say, except from his letter of Aug., 1865, already spoken of. I do not know of any correspondence between Lyon and either of his agents.

To the 8th int. he answers: Yes; I knew I. A. Paschal; he is dead; he died in February or March, 1868; he was a lawyer by profession; he was and acted as agent and att'y for defendant, I. L. Lyon, as stated in my answer to direct interrogatory No. 5; he attended to the
79 sale of Lyon's real estate and paid assessments due on Lyon's gas stock, which amounted to between five and six thousand dollars.

To the 9th int. he answers: I know that I. A. Paschal sold real estate of said I. L. Lyon, as the agent or att'y of Lyon. I was personally engaged in the sale of 9 lots in Beck's addition in San Antonio, from the fact that I. A. Paschal, as agent of Lyon, ordered them to be sold at auction, and they were sold at auction at the house with which I was then connected. The sale of these nine lots was made Oct. 4th, 1865, and the lots were Nos. 9 & 10 in block No. 2; lots No. 2, 7, 8, 13, & 14, in block No. 3, and lots No. 7 & 8 in block No. 6. The proceeds of the sales were received by Paschal, and by him used to pay assessments made on Lyon's gas stock. I was present at the sale and payment of the money, which was made in the auction house of which I was then a member. Paschal, as agent of Lyon, directed me to pay fifteen hundred dollars of the money on Lyon's gas stock, and I paid that amount to the superintendent of the gas company. The balance of *of* $300, less our commissions, was paid over to I. A. Paschal.

80 To the 10th int. he answers: I have already said in answer to the last question, that Paschal, as agent of Lyon, sold property and how he appropriated the money. The reason why the sales were made was that the gas company had made assessments on the stock of its stockholders. There had been one assessment made of 2½ per cent., amounting on the stock of Lyon to one thousand five hundred dollars. This assessment was made on the 18th day of April, 1863, and on the first of September, 1865, reduced to four hundred and fifty dollars; and other assessments were made, as follows: An assessment of 2½ pe rcent. on the 31st of October, 1865; and assessment of 2½ per cent. on the 31st of March, 1866; and another assessment of 4 per cent. on the 1st of March, 1867. All of these assessments were required to be paid to the gas company; and in case of failure on the part of stockholders, their stock would have been sold. I know that Paschal was anxious to prevent the sale of Lyon's stock, and that he made the sales to raise money for the purpose of paying off the assessments on Lyon's
81 stock. If he had any other reason for making the sale I was not aware of it.

To the 11th interrogatory. I have stated all I know.

E. A. FLORIAN.

To the cross-interrogatories the witness answers:

The 1st X-int. he answers: Lyon left the State of Texas in 1861, and has never returned to my knowledge. I have never seen him since the time he left.

To the 2nd X-interrogatory he answers: The instrument referred to

in this question as attached to the X-interrogatories is a copy of the letter I have spoken of in answer to the plaintiffs' interrogatories. I was one of the witnesses to the letter when it was first proved up for record, and I have since seen a certified copy of it. I think the copy attached a correct copy, although I cannot say that it is a literal copy. I do not remember of having seen any other written authority from Lyon to Paschal.

E. A. FLORIAN.

STATE OF TEXAS,
County of Bexar:

I, Alex. E. Sweet, a notary public in and for the county of Bexar, State of Texas, do hereby certify that the witness, E. A. Florian,
82 named in the foregoing interrogatories, to me well known, and who is a resident of this county, has this day personally appeared before me, Alex. E. Sweet, a duly qualified notary public in and for the said county of Bexar, and, having been first by me duly sworn to tell the whole truth and nothing but the truth in answer to the interrogatories and cross-interrogatories hereto attached, made each of the answers on the pages preceeding his signatures. Said answers having been reduced to writing in the presence of the witness, were sworn to and subscribed to in my presence, on the 29th day of December, 1873.

In testimony whereof I hereunto sign my name and affix the impress of my official seal, at office in San Antonio, this 29th day of December, 1872.

[L. S.] ALEX. E. SWEET,
Not. Pub., B. C.

Exhibit A.

MONTEREY, *August 24th*, 1865.

I. A. PASCHAL:

MY DEAR SIR: I am just in receipt of a letter from M'r Ben-
83 nett, informing me that he has placed all my papers, for safe-keeping, in your possession. In better or safer hands he could not have given them. The position you have occupied during the past four years of the war is a very enviable one, as glorious as it has been dangerous. I congratulate you upon the issue. I am sure you have no reason to regret your decision to abide by the Union. I trust you will be rewarded in proportion as traitors shall be cursed. We have a herd of Texan traitors in Mexico at the present time. I can say but little. I am unable to go to San Antonio at present. My family are sick in the North, & demand my presence there. M'r Kinney's death leaves a large business in my hands to be settled. I wish you to manage as you would with your own. If an opportunity offers to sell everything I have, would be glad to sell. It may be parties will come into San Antonio who will be glad to purchase my gass-stock and real estate. I shall be glad, if you find time to write to me, if you
84 will give me a description of affairs as they exist at present. I shall probably remain here two months yet. I notice you have a note of M'r Fondas' belonging to me. He left some stock in the hands of his adopted son. Can you not find out what has become of it, and, if possible, get hold of it as security? Can you tell me whether I can collect notes that have been paid by parties in Confed. paper to N. O. Green? I do not see how the payment under such circumstances can release them any more than payment to N. O. Green of the am't of

Northern indebtedness can release a merchant from obligation to pay his Northern creditor. I enclose a letter for my wife. It is impossible to send letters by Matamoras. The road has been blockaded for a long time. If you have regular mail, I shall be greatly obliged if you will mail this letter. If no mail, will you do me the favor to send by private hands to New Orleans.

Most resp'y, yours,

I. L. LYON.

JESUS & KATHARINE HERNANDEZ *vs.* ISAAC L. LYON. } No. 70.

85 Cross-interrogatories to be propounded to the witness, E. A. Florain.

Cross-int'y 1st. Please state when the defendant, Lyon, left San Antonio, and please state whether or not he has ever returned to San Antonio or Bexar County, Texas, since he left in 1861. Have you ever seen him since he left Texas in 1861? If so, when and where?

Cross-int'y 2nd. If, in answer to the 6th direct interrogatory, you have stated you have seen a letter or written instrument from the defendant, Lyon, to I. A. Paschal, authorizing the said Paschal to act as his agent, please read a copy of a letter from defendant, Lyon, to Paschal dated 24th of August, 1865, hereto appended and marked "Exhibit A," and then please state whether or not it is a literal copy of the written instrument you refer to in your answer to the 6th direct interrogatory. Is it not true that you never saw any other written authority from the defendant, Lyon, to the said I. A. Paschal, except the one described in Exhibit A, hereto appended? That letter was recorded in your county rec-
86 ords. If you have any doubt of its being a true copy, will you please compare them before you answer?

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

JESUS HERNANDEZ AND KATHARINE HERNANDEZ *vs.* ISAAC L. LYON. } In chancery.

Interrogatories to be administered to E. A. Florian, a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katharine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1st. Do you know the parties, complainants and defendants, in the title to these interrogatories named, or any and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 2. If, in answer to the foregoing interrogatory, you say that
87 you know the defendant, Isaac L. Lyon, then please state whether you have had any and what business relations with said Lyon, and what opportunities, if any, you have had to become acquainted with his business transactions in San Antonio, Texas.

Int. 3. Did said Lyon live in the city of San Antonio, in Texas, at any

time? If yea, when did he live there, how long, and what business was engaged in? Does he live in said city now? If not, when did he leave there?

Int. 4. If you say, in answer to the last interrogatory, that said Lyon does not now live in said city of San Antonio, then please state what business, property, or other interests he left in said city, if any, when he removed therefrom. Did he, at the time of his leaving, own any property, real or personal, in said city? If yea, what was it, and what was its condition, so far as you may know?

Int. 5. If you say, in answer to the last foregoing interrogatory, that said Lyon owned and left property in said city, then please state, also, whether he left or had an agent or attorney to attend to his property and interests in his absence. If yea, did he have one or more
88 agents or attorneys, or was there any change of such agent or attorney at any time? If yea, when did such change take place, and what was it?

Int. 6. If you say, in answer to the foregoing, that Lyon had an agent or attorney, and that a change was made, then please state, if you know, why and by whom such change was made. Have you seen any instrument of writing at any time, appointing an agent or attorney? If so, by whom, when and where was such instrument written and signed. State your full knowledge on this subject, and state also where such instrument now is, if you know, when and where you first and last saw it, as well as its contents, giving, as near as you can, the exact language of the instrument; and if you cannot do that, then give its substance.

Int. 7. If, in answer to the foregoing interrogatories, you have stated that said Lyon removed from San Antonio, leaving property there, then you will please now state, if you know, who was regarded, treated and recognized by said Lyon as his agent or attorney at different times
89 after his removal from San Antonio. If you know of any correspondence between said Lyon and any agent or attorney, please state what it was.

Int. 8. Did you know I. A. Paschal? If yea, is he living or dead? If dead, when did he die? What was his business or profession; and what connection, if any, did said Paschal have, in his life-time, with the business, property and interests of the said Lyon in San Antonio?

Int. 9. Do you know of the sale of any property, real or personal, belonging to the said Lyon, by any agent or attorney, whom you may have named in your previous answers? If yea, what property was so sold, by whom, when, and for what purpose or reason, if you know? What became of the proceeds of any sale or sales made? Please state fully all you may know or remember in relation to the subject-matter of this interrogatory.

Int. 10. If you say, in answer to the last foregoing interrogatory, that any sale or sales of property of the said Lyon was or were made, then please state whether the purchase-money of said sale or sales was
90 paid, and how the proceeds of such sale or sales were appropriated, if you know. Please state, also, if you know, whether such sale was or such sales were, made for any special purpose, or with any particular object; and if yea, state the purpose or object, and the reason why any sale or sales were made for such object or purpose.

Int. 11. Do you know any other matters or things touching the matters in controversy in this cause, which may tend to the benefit or advantage of the said complainants therein? If yea, set forth the same and all the circumstances and particulars thereof, fully and at large,

according to the best of your knowledge, remembrance and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

We, the undersigned counsel and solicitors for the defendant in the cause No. 70, Jesus Hernandez and Katharine Hernandez vs. Isaac L. Lyon, in the U. S. circuit court, ch'y, western district, Texas, at Austin hereby
91 agree that the answers to the foregoing interrogatories and the cross-interrogatories propounded to the witness, E. A. Florian, may be taken to the originals without filing or commission, or the ten days' notice, or other formality, by any officer in the State of Texas authorized by law to take depositions, and returned by him, in the same manner as depositions are returned under the laws of said State; and we further agree that said depositions, when taken, may be used in cases No. 71, 72, 73, 74, and 75, wherein the said Isaac L. Lyon is also defendant, in the same manner and effect as if they had been taken and returned in each of said causes for particular use therein, subject only to such objections as may obtain to the admissibility of the evidence, as if said depositions had been formerly taken & returned in each of said causes.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant I. L. Lyon.

92 PL'FFS' TESTIMONY.

Answers and deposition of W. A. Bennett, endorsed "Received from p. office at Austin, & filed January 4, 1874. M. Hopkins, cl'k."

JESUS HERNANDEZ AND KATHERINE HERNANDEZ
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to W. A. Bennett, a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katherine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1st. Do you know the parties complainants and defendant to the title to these interrogatories named, or any and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Interrogatory 2. If, in answer to the foregoing interrogatory, you say that you know the defendant, Isaac L. Lyon, then please state whether you have had any, and what, business relation with said Lyon, and what opportunities, if any, you have had to become acquainted with his business transactions in San Antonio, Texas?

93 Int. 3. Did said Lyon live in the city of San Antonio, in Texas, at any time? If yea, when did he live there, how long, and what business was he engaged in? Does he live in said city now? If not, when did he leave there and where does he now live?

Int. 4. If you say, in answer to the last interrogatory, that said Lyon does not now live in said city of San Antonio, then please state what business or other interests he left in said city when he removed therefrom? Did he at the time of his leaving own any property, real or personal,

in said city? If yea, what was it, and what was its condition, so far as you may know? You will please state fully.

Int. 5. If you say, in answer to the foregoing interrogatory, that said Lyon owned and left property in said city, then please state also whether he left or had an agent or attorney to attend to his property and interests in his absence? If he did, who was such agent or attorney, by what authority did he act, how was he appointed, by whom, when, and was his authority in writing, by whom was such writing signed, to whom delivered, and when?

94 Int. 6. If you say that you were appointed and acted as the agent or attorney of said Lyon, then please state whether you were appointed by an instrument of writing, and where such instrument is now? Annex it to your answers if you have it in your possession; and if not in your possession, state what has become of it. If it is not now in your possession, and you have stated what has become of it, then state what were its contents as near as you can, in the exact words of the instrument, and if you cannot do that, state its substance.

Int. 7. If you say that you were appointed and acted as the agent or attorney of said Lyon, you will then please state how long you so acted and whether you are still acting. If not still acting, who was your successor in such agency? By whom and by what authority was your successor appointed, when was he appointed, and what did said Lyon do, if anything, in relation to the appointment of another agent or attorney after you ceased to act?

Int. 8. If, in answer to the last foregoing interrogatory, you say that you ceased to act as agent or attorney of said Lyon, and that another was appointed, you will then state whether you have seen any

95 instrument of writing making such other appointment, and, if so, by whom was it written, by whom signed, what was its date, and where was it made? What were the contents of said instrument? State as near as you can its exact language, and, if you cannot do that, state its substance.

Int. 9. Did you know I. A. Paschal? If yea, is he living or dead? If dead, when did he die? What was his business or profession? and what connection, if any, did said Paschal have in his life-time with the business, property, and interests of the said Lyon in San Antonio?

Int. 10. Do you know of the sale of any property, real or personal, belonging to the said Lyon by any agent or attorney whom you may have named in your previous answers? If yea, what property was so sold, by whom, when, and for what purpose or reason, if you know? Who received the proceeds of any sale or sales so made, and what was done with the proceeds by the party selling, so far as you may know?

Int. 11. If, in answer to the last foregoing interrogatory, you say that property of said Lyon was sold, and that the proceeds of such

96 sale or sales were appropriated to any purpose, then please state also, if you know, what that purpose was and the reason why any sale or sales were made for such purpose.

Int. 12. Do you know any other matters or things touching the matters in controversy in this cause, which may tend to the benefit or advantage of the said complainants therein? If yea, set forth the same and all the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

We, the undersigned counsel & solicitors for the defendant in the cause No. 70, Jesus Hernandez and Katherine Hernandez vs. Isaac L. Lyon, in U. S. cir. court, ch'y, western district of Texas, at Austin, hereby agree that the answers to the foregoing interrogatories and the cross-interrogatories propounded to the witness, W. A. Bennett, may be taken to the original without filing or commission, or the ten days' notice, or other formality, by any officer in the State of Texas authorized by law to take depositions, and returned by him in
97 the same manner as depositions are returned under the laws of said State; and we further agree that said depositions, when taken, may be used in causes No. 71, 72, 73, 74, and 75, wherein the said Isaac L. Lyon is also defendant, in the same manner and effect as if they had been taken & returned in each of said causes for particular use therein, subject only to such objections as may obtain to the admissibility of the evidence, as if said depositions had been formally taken and returned in each of said causes.

CHANDLER, CARLETON AND ROBERTSON,
Att'y' for Def't Lyon.

JESUS HERNANDEZ AND KATHERINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70.

Cross-interrogatories to be propounded to the witness, W. A. Bennett:

Cross-int'y 1st. If, in answer to the direct interrogatory, you have stated that the defendant I. L. Lyon once lived in San Antonio, Texas, and that he left there, please state if you know when he left San Antonio, and all the circumstances under which he left, and your means of knowing. If he was informed by any one or more persons that he was threatened with bodily harm by any class or number of men,
98 please state fully all about the whole affair, who gave Lyon information of his supposed or threatened danger, who communicated the fact to him, when and where it was; was it in the night or daytime?

Cross-int'y 2nd. If, in answer to the preceding cross-interrogatory, you have stated that M'r Groesbeck informed M'r Lyon of his danger, state where M'r Groesbeck then lived. Is he dead or alive? If dead, when and where did he die? If you have stated that any such information came through one John A. Wilcox, then state where he then lived. Is he dead or alive? If dead, when did he die?

Cross-int'y 3rd. What was the political status of the defendant Lyon with reference to what was then called the "Southern Confederacy"? State whether or not his political views were generally known in San Antonio. If yea, what was the feeling toward him upon that subject among the advocates of the Southern Confederacy? and state whether or not he was threatened to be hung or with being ill treated by any particular class of men in San Antonio or Bexar County. If yea,
99 please state all that you may know about it, and your means of knowing, and state whether or not the defendant Lyon was persuaded by his friends to leave for fear that he would be hung or suffer bodily harm from a society of men in San Antonio that were in favor of the success of the Southern Confederacy. Please state all that you may know about it, if anything, and all about how you know what you state.

Cross-int'y 4th. If in answer to the preceding interrogatories you

have stated that the defendant Lyon left San Antonio and Texas on account of the information that he was threatened to be hung on account of his Union proclivities, then state whether or not he was hurried off or went in a hurry. Did he dare to show himself or let the people generally know where he was, after he was informed of his danger? Did he go off in the day or night time? Did he go off publicly or privately? State all about when and how he went away from San Antonio. Did he have time to wind up or settle his business; if not, how otherwise? State fully.

Cross-int'y 5th. If in answer to the direct interrogatories you
100 have stated that you ever was the agent of the defendant Lyon, and you had a written power of attorney from him, please examine a copy of a power of attorney hereto appended from Lyon to you marked "Exhibit A," and state whether or not it is a literal copy of the original that you had and acted under; if you have any doubt about it, will you please take it to the records of Bexar County and compare it with the record of said power of attorney, and then answer?

Cross-int'y 6th. If in answer to the 8th & 9th direct interrogatories you have stated that I. A. Paschal ever acted as the agent under any written authority from the defendant Lyon to him, Paschal, will you please examine the copy of a letter from Lyon to Paschal, dated 24th August, 1865, marked "Exhibit B," hereto appended, and state whether or not it is a literal copy of the only written authority from the defendant Lyon to Paschal that you know anything about of your own knowledge?

Cross-int'y 7th. Where did I. A. Paschal live from 1861 until he died, and when did he die? Where has defendant lived since 1865?

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

101 *Exhibit A.*

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that I, Isaac L. Lyon, of the said county of Bexar and said State of Texas, have made, constituted, and appointed, and do by these presents make, constitute, and appoint W. A. Bennett, of the county and State aforesaid, my true and lawful attorney in fact, to take charge of, possess, and control all my property and estate of every sort, real and personal and mixed, choses in action and assetts, and for me and in my name to hold and control or sell, transfer, and convey the same to whomsoever and for what consideration soever, and upon whatever terms and manner he may deem fit and best for my interest, hereby authorizing my said attorney to collect and receipt for all debts, rents, and profits due or to become due to me; also to sell and convey by good and sufficient deeds in fee-simple any and all real estate I may and do own in the county aforesaid; also to collect the dividends and vote in my stead, and in all respects represent me in my gas-light stock in the city of San Antonio, all matters pertaining to
the management of the same, and to sell said stock and transfer
102 the same upon the books of the company as required by their charter and by-laws, and to do and perform all the aforesaid acts and things and to do all manner of acts and things touching my estate aforesaid, that I could in person; and I hereby notify and confirm, and hold myself at all times bound to ratify and confirm, all the acts and doings of my said attorney to be done and performed in the premises aforesaid

as fully and perfectly, and to all intents and purposes as if done by me in my proper person.

In testimony whereof I have hereunto subscribed my name this 22nd day of May, 1861.

I. L. LYON.

In the presence of—
W'M P. M. MEANES.
W'M GROESBECK.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, Henry M. Smyth, to me well known, who being me duly sworn, says that W'm P. M. Meanes and W'm Groesbeck, whose names are signed as witnesses to a power of attorney given 22nd May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached, reside out of the State of Texas.

H. M. SMYTH.

103 Sworn to and subscribed before me this 18th day of March, A. D. 1867.

[L. S.] EDWARD MILES,
Notary Public, B. Co.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, John C. French and E. A. Florian, to me well known, who, being by me duly sworn, depose and say that they are disinterested witnesses in the matter of the power of attorney given 22nd May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached; that they are well acquainted with the handwriting of I. L. Lyon, who executed the said instrument, and of W'm Groesbeck, one of the witnesses to the same, and recognized the name thereto signed to be the genuine signature of the said I. L. Lyon and W'm Groesbeck.

JOHN C. FRENCH.
E. A. FLORIAN.

Sworn to and subscribed before me this 18th March, A. D. 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

104 *Exhibit B.*

MONTEREY, *August 24th*, 1865.

I. A. PASCHAL:

MY DEAR SIR: I am just in receipt of a letter from M'r Bennett informing me that he has placed all my papers for safe-keeping in your possession. In better or safer hands he could not have given them. The position you have occupied during the past four years of the war is a very enviable one, as glorious as it has been dangerous. I congratulate you upon the issue. I am sure you have no reason to regret your decision to abide by the Union. I trust you will be rewarded in proportion as traitors shall be cursed. We have a herd of Texas traitors in Mexico at the present time. I can say but little. I am unable to go to San Antonio at present; my family are sick in the North and demand my

presence there. M'r Kinney's death leaves a large business in my hands to be settled. I wish you to manage as you would with your own. If an opportunity offers to sell everything I have, would be glad to sell it. Maybe parties will come into San Antonio who will be glad to purchase my gas-stock and real estate.

105 I shall be glad, if you find time to write to me, if you will give me a description of affairs as they exist at present. I shall probably remain here 2 months yet. I notice you have a note of M'r Fonda's belonging to me. He left some stock in the hands of his adopted son. Can you not find out what has become of it, and, if possible, get hold of it as security? Can you tell me whether I can collect notes that have been paid by parties in Confed. paper o N. O. Green? I do not see how the payment under such circumstances can release them any more than payment to N. O. Green of the amount of *of* northern indebtedness can release a merchant from obligation to pay his northern creditors. I enclose a letter for my wife. It is impossible to send letters by Matamoras. The road has been blockaded for a long time. If you have regular mail, I shall be greatly obliged if you will mail this letter; if no mail, will you do me the favor to send by private hands to New Orleans?

Most resp'y, yours,

I. L. LYONS.

106 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared W. A. Bennett, of said county, to me well known, who, being by me duly sworn to true answers make to the interrogatories propounded to him in a suit now pending and at issue in the circuit court of the United States for the western district of Texas, No. 70 on the docket thereof, wherein Jesus Hernandez and Katherine Hernandez are plaintiffs and Isaac L. Lyon is defendant, responds as follows, to wit:

To interrogatory 1st he answers: I know the complainants only by sight and have known them for some years. I cannot say how many years. The defendant Lyon I have known since 1859.

To 2nd int.: Isaac Lyon and myself were partners in business from January, 1860, until 1862. After he left San Antonio in 1861 I was his attorney in fact, and remained and acted as such until 1865. As his partner and agent or attorney in fact, I was acquainted with most, probably all, of his business transactions in San Antonio, Texas.

107 To 3rd int.: Lyon lived in San Antonio from 1859 to 1861. He and I were engaged in the mercantile business. He also established the gas-works in San Antonio, in which I had no connection with him. He does not live here now. He left in 1861, and I think he now lives in the State of Michigan.

To 4th int.: When Lyon moved from San Antonio in 1861, he still owned his gas-stock and some real estate. He owned a number of city lots, but how many I do not now remember. The city lots were, as far as I know, unimproved and unoccupied. His gas-stock consisted of six hundred shares, of one hundred dollars each. This stock was partially paid up; he had paid about fifty dollars on each share, and the stock was subject to assessments by the gas company.

To 5th int.: When Lyon left here he appointed me as his agent. He gave me a power of attorney, authorizing me to act as his attorney in fact. The power was in writing, signed by himself, and delivered by him to me in the month of May, 1861.

To 6th int.: The power of attorney from Lyon to me was in
108 writing, as I have already stated. It was destroyed by me. I kept the instrument until I ceased to act as his attorney or agent; when I had no further use for it I destroyed it, with some other papers and letters which I had received from him. In 1867, Lyon and I settled our partnership and other business and passed receipts, and the papers and letters were of no further use to me, for which reason they were burned up. The power authorized me to take charge of and possess and control all of his property, real as well as personal, to sell, transfer, and convey the same upon such terms as I might see fit and best for his interest. I was also authorized to manage and control his gas-stock, and to sell and transfer the same, and generally to do all things that the said Lyon could do himself in relation to his estate in Bexar County. When I answered interrogatories on a former occasion in a suit between the same parties, I attached a certified copy to my answers, at the request of M'r Lyon's counsel. That was a correct copy of the power I held from Lyon.

109 To 7th int. I have already stated that I acted as the agent or attorney of Lyon until 1865. In that year I was preparing to live in San Antonio, and did live in the month of August. I. A. Paschal, an attorney at law, then living in San Antonio, was my successor in the agency. I turned over all the papers and business of Lyon to Judge Paschal, and took a receipt, which I forwarded to Lyon. I also advised Lyon, by letter, of what I had done, and he approved of my course and action in the matter, also by letter. This was in the summer of 1865. After that, Lyon corresponded with Paschal about his business, and treated and regarded Paschal as his agent. I know this from the letters of Lyon to me. The letters I received from Lyon were destroyed by me with the power of attorney, as I have before stated, and I have no part of the correspondence with Lyon, except copies of some letters, which were written by me to him in answer to letters from him. The copies here mentioned were attached to my former deposition, and were, as I understood at the time, sent to the Federal court in Austin about six months ago. to be used in a suit between this same parties.

110 To 8th int.: I have already stated that the papers and business of Lyon were turned over by me to Judge Paschal. After I informed Lyon of my action, I saw a letter written by Isaac L. Lyon to Judge Paschal, dated at Monterey, in Mexico, in August, 1865—the 24th of August, I think—in which letter Lyon requested Paschal to do with his (Lyons) property as he would with his own, also telling Paschal that he would be glad to sell everything, if an opportunity to do so offered. This was that part of the letters relating to Lyon's property. I have not seen the original lately. E. A. Florian, John C. French, and myself made oath to its execution by Lyon for the purpose of having it recorded. It was recorded in the records of Bexar County, and a certified copy was attached to the deposition I have twice before mentioned, at the request of M'r Lyon's attorney.

To 9th int.: I know I. A. Paschal very well. He is dead; died in February, 1868. He was a lawer by profession. His connection with the business and property of Lyon was, that he acted as the
111 agent of Lyon in San Antonio. He acted as such until the time of his death and was in correspondence with Lyon.

To 10th int.: I know but little of the matters enquired of in this interrogatory of my own knowledge. I know that property was sold by Paschal as the agent or attorney of Lyon, and that the property so sold was real estate, but to whom it was sold, or the time when, I do not

know and cannot state. The proceeds of the sales were applied to the payment of installments called for by the gas company upon the stock of Lyon. The stock of Lyon was assessed in common with the stock of the other stockholder.

To 11th int.: I have already stated that real estate belonging to Lyon was sold by Paschal for the purpose of paying assessments made by the gas company upon Lyon's gas-stock. The reason why the sales were made for that purpose was *was* that the gass-stock would have been sold if the assessment had not been paid, and the real estate was sold to prevent a sale of the gas-stock by the gas company.

To 12th int.: I do not know anything further touching the mat-
112 ters in controversy, or that would benefit either party to this suit. The letters written by me to Lyon in answers to letters received from him I have already referred to as being attached to my former d*is*positions. There was one other letter written to him on private business, dated April 14th, 1867, from which I make the following extract, so far as it bears on the subject of the interrogatories. It reads as follows: "I wrote to M'r E. G. Merrick at Detroit to le've your address. I hásten to write you, as he though' you would soon leave N.Y. In yours of Jan'y *I*, 1867, you mention that none of my letters had come to hand. I answered soon after receipt of same, also saw Judge Paschal, and he wrote you fully on the subject of gas-stock and real estate. He is anxiously expecting to hear from you on the subject; will call on him to-morrow and give him your address, and have him write you on the subject again. I assist Paschal in regard to your business, and hope his acts will be satisfactory to you under the circumstances." I will also state that
113 I did assist Paschal, and consulted with him in relation to Lyon's business, and that the sale of Lyon's real estate by Paschal met my approval, inasmuch as by making those sales the sacrifice of the gas-stock was prevented. The prices at which Paschal sold the real estate were the highest market prices, and they were higher than the property would have sold for during two or three years after the sales were made.

To 1st x-int. Isaac L. Lyon l*eff* San Antonio in the month of May, 1861; at that time M'r Lyon was staying at my house. One night M'r Groesbeck came to the house and said that he had been informed that bodily injury was threatened to Lyon, and advised him to leave; the threats coming from what was then known as the K. G. C's. After considerable persuasion Lyon left my house, and in the course of the night went to the Menger Hotel, where he remained until three o'clock the next afternoon. At that hour I took M'r Lyon in my carriage to the Salado Creek, where he took the stage coach and proceeded on his way to Galveston.

To 2nd x-int. M'r Groesbeck lived in San Antonio at the time mentioned in my last answer, and remained here and in other parts of Texas until after the close of the war. He is still living and now resides
114 in the State of Missouri. When M'r Groesbeck came to my house on the night spoken of, he said that his information came from Jno. C. Wilcox; Wilcox then lived in San Antonio. He died in 1864.

To 3rd x-int. The political sentiments of Lyon were in favor of the Union, and he was opposed to the secession movement. His political views were generally known to his friends; whether they were generally known in San Antonio I am unable to say; nor can I say what was the feeling towards him specially on that subject among the advocates of the Southern Confederacy. Their feelings towards Union men generally was considerably embittered and Lyon was probably not an exception. As to whether he was threatened to be hung or ill treated I cannot

say, except what was said by M'r Groesbeck, and that I have already related in my answer to the two previous interrogatories.

To 4th x-int. Lyon went off as I have before stated. He left my house on the night that M'r Groesbeck came there. From my house he went, as I was informed, to the house of a mutual friend, and then to the Menger Hotel. He stayed at the hotel that night and until 3 o'clock
115 the next afternoon, when I met him with my carriage and drove myself to the Salado, as already stated. To whom or to how many his stay at the Menger Hotel was known, I cannot say, but it is probably that the people generally were not aware where he was or that he was going away. He went away from San Antonio at or about 3 o'clock in the afternoon in my private carriage. From the time M'r Groesbeck came to my house until the next afternoon when he left, he would not have had time to wind up his business, dispose of his real estate and gas-stock. He arranged his papers during the day and delivered them to me, together with his power of attorney.

To 5th x-int. The document referred to in this interrogatory is, as near as I can remember, a correct copy of the power of attorney from Lyon to me; a certified copy from the records of Bexar County is attached to my former deposition, to which I have several times referred in my answers to the interrogatories-in-chief.

To 6 x-int. The copy of the letter referred to in this interrogatory is likewise a correct copy; a certified copy of this was also attached to my former depositions, and I would be glad if counsel on both sides
116 would compare the copies now shown me with the certified copies attached to my said depositions. The letter of August 24th, 1865, is the only direct written authority from Lyon to Paschal that I have any knowledge of. There was correspondence between them in relation to Lyon's business, but I cannot furnish it.

To 7th x-int. Paschal lived in San Antonio from 1861 until he died; he died in February, 1868. Lyon has lived in Michigan since 1865, so far as I know. During part of the time since 1865 he had an office in the city of New York, and transacted business there; but I think his family resided in Michigan all the time. His office was in No. 35 Wall street, New York, and there is where letters were addressed to him.

W. A. BENNETT.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness W. A. Bennett were taken, sworn to, and subscribed before me this 31st day of December, A. D. 1873.

[L. S.] JULIUS HOYER,
Notary Public, Bexar Co.

Notarial fee for taking deposition, postage, &c., $4.40.

117 PL'FF'S TES.

The deposition of Katharine Hernandez is endorsed, "Received from p. office at Austin & filed Dec. 31, 1873. M. Hopkins, cl'k."

Deposition of Katharine Hernandez.

The interrogatories to and depositions of Katherine Hernandez are in words to wit:

JESUS HERNANDEZ AND KATHERINE HERNANDEZ *vs.* ISAAC L. LYONS. } In chancery.

Interrogatories to be administered to Katherine Hernandez, one of the complainants, and a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and the said Katherine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 2. State whether or not you are one of the complainants in the above-entitled cause. If *yea*, state what was your name in the
118 month of April, 1866; who is your present husband, and when you were married to him.

Int. 3. This cause was brought to perfect your title to the following-described lot of land situated in the city of San Antonio, in the county of Bexar, and State of Texas, at the corner of Soledad street and the fourth street or alley (running east and west) north of the main plaza of said city. State whether or not you are in possession of said lot. If yea, how long have you held possession thereof. What has been the character of your possession, was it or not continuous, and was it open and notorious, or otherwise?

Int. 4. State when, why, and how you first took possession of said lot. What, if any, claim did you have thereto?

Int. 5. If in answer to the last foregoing interrogatory you say that you bought said lot, then state from whom you bought it, in what capacity the person from whom you bought it acted at the time of making the sale to you, whether or not you paid the purchase-money for said lot; If yea, to whom, and what was the amount of purchase-money you paid?

119 Int. 6. State whether or not you, or yourself and your husband, have made any improvements upon said lot. If yea, by whom and when were such improvements made; what is their character and present condition and value?

Int. 7. State whether or not, at the time you bought said lot, any deeds or title-papers were delivered to you; if yea, by whom were such deeds or title papers delivered to you and what were they? Describe them as near as you can and state where they now are.

Int. 8. State what was the value of said lot at the time you purchased the same, and whether or not you paid its full market value for it.

Int. 9. Do you know any other matters or things touching the matters in issue in this cause which may tend to the benefit or advantage of either party therein? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best

say, except what was said by M'r Groesbeck, and that I have already related in my answer to the two previous interrogatories.

To 4th x-int. Lyon went off as I have before stated. He left my house on the night that M'r Groesbeck came there. From my house he went, as I was informed, to the house of a mutual friend, and then to the Menger Hotel. He stayed at the hotel that night and until 3 o'clock
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To 5th x-int. The document referred to in this interrogatory is, as near as I can remember, a correct copy of the power of attorney from Lyon to me; a certified copy from the records of Bexar County is attached to my former deposition, to which I have several times referred in my answers to the interrogatories-in-chief.

To 6 x-int. The copy of the letter referred to in this interrogatory is likewise a correct copy; a certified copy of this was also attached to my former depositions, and I would be glad if counsel on both sides
116 would compare the copies now shown me with the certified copies attached to my said depositions. The letter of August 24th, 1865, is the only direct written authority from Lyon to Paschal that I have any knowledge of. There was correspondence between them in relation to Lyon's business, but I cannot furnish it.

To 7th x-int. Paschal lived in San Antonio from 1861 until he died; he died in February, 1868. Lyon has lived in Michigan since 1865, so far as I know. During part of the time since 1865 he had an office in the city of New York, and transacted business there; but I think his family resided in Michigan all the time. His office was in No. 35 Wall street, New York, and there is where letters were addressed to him.

W. A. BENNETT.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness W. A. Bennett were taken, sworn to, and subscribed before me this 31st day of December, A. D. 1873.

[L. S.] JULIUS HOYER,
Notary Public, Bexar Co.

Notarial fee for taking deposition, postage, &c., $4.40.

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JESUS HERNANDEZ AND KATHERINE HERNANDEZ
vs.
ISAAC L. LYONS. } In chancery.

Interrogatories to be administered to Katherine Hernandez, one of the complainants, and a witness in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and the said Katherine Hernandez are complainants and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int. 2. State whether or not you are one of the complainants in the above-entitled cause. If *yea*, state what was your name in the
118 month of April, 1866; who is your present husband, and when you were married to him.

Int. 3. This cause was brought to perfect your title to the following-described lot of land situated in the city of San Antonio, in the county of Bexar, and State of Texas, at the corner of Soledad street and the fourth street or alley (running east and west) north of the main plaza of said city. State whether or not you are in possession of said lot. If yea, how long have you held possession thereof. What has been the character of your possession, was it or not continuous, and was it open and notorious, or otherwise?

Int. 4. State when, why, and how you first took possession of said lot. What, if any, claim did you have thereto?

Int. 5. If in answer to the last foregoing interrogatory you say that you bought said lot, then state from whom you bought it, in what capacity the person from whom you bought it acted at the time of making the sale to you, whether or not you paid the purchase-money for said lot; If yea, to whom, and what was the amount of purchase-money you paid?

119 Int. 6. State whether or not you, or yourself and your husband, have made any improvements upon said lot. If yea, by whom and when were such improvements made; what is their character and present condition and value?

Int. 7. State whether or not, at the time you bought said lot, any deeds or title-papers were delivered to you; if yea, by whom were such deeds or title papers delivered to you and what were they? Describe them as near as you can and state where they now are.

Int. 8. State what was the value of said lot at the time you purchased the same, and whether or not you paid its full market value for it.

Int. 9. Do you know any other matters or things touching the matters in issue in this cause which may tend to the benefit or advantage of either party therein? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best

of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDER & UPSON,
Att'ys for Complainants.

120 We, the counsel and solicitors of the def't in cause No. 70, chancery, in U. S. circuit court, western district Texas, of Jesus and Katherine Hernandez against Isaac L. Lyon, hereby waive service, time, copy, and commission of and on the foregoing interrogatories, and agree that the same may be answered instanter before any officer authorized in Texas to take depositions, and the answers when taken may be read in evidence on the trial of said cause free of objection as to formality of taking and returning, but subject to all objections as to their admissibility or the competency of the witness; and we further agree that the said answers may be read under like waiver and restrictions in causes 71, 72, 73, 74, 75, & 76, therein Isaac L. Lyon is defendant, involving like question as this cause pending in same court, except as to the value of rents and improvements in case' 71, 72, 73, 74, 75, & 76. This agreement is made to avoid the making of useless cost.

CHANDLER, CARLETON & ROBERTSON,
Solicitors for Def't Lyon.

121 JESUS HERNANDEZ AND KATHERINE Hernandez *vs.* ISAAC L. LYON. } No. 70. In chancery.

The defendant excepts and objects to all that part of the 5th direct interrogatory propounded to the witness, Katherine Hernandez, as seeks to prove from whom she bought the lot in controversy, or the capacity in which the party was acting at the date of her purchase, because she relies in her bill of complaint alone upon written authority in the party from whom she purchased, and exhibits a copy of that written authority. The execution of said written instrument is not denied by defendant, therefore her testimony is not admissible in evidence in this cause.

And to all that part of the 7th direct interrogatory as seeks to prove the existence and contents of the papers under which she claims said lot, because there is no predicate laid in the bill by alleging the loss or destruction of her title-papers or her inability to produce them. Wherefore said interrogatories and the answers thereto, if in the affirmative, are illegal, inadmissible, and irrelevant as evidence in this cause; and defendant's counsel will move to suppress the same on the trial of this cause.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

122 Defendant propounds the following cross-interrogatories to said witness:

Cross-int'y 1st. If in answer to the 4th direct interrogatory you have stated that you or you and your husband have made any improvements on said lot, please state the date or dates when said improvements were put upon said lot. Please give us the name of each party or parties as the case may be that made said improvements for you. What kind of material was said improvements made out of? State the size of each room put upon said lot by you or you and your husband. Have you got

the bills that you paid for making the improvements upon said lot? If so, please attach a copy of each bill that you paid for said improvements and give us the name of each party that you paid the bills to, and state where each one of them now live.

Cross-int'y 2nd. Where has the defendant Isaac L. Lyon lived since April, 1866? Who told you where he lived in 1866, 1867, 1868, 1869, 1870, 1871, & 1872, and each of said years, or any one or more of said years, and which one or more of said years? How many houses
123 have you built or had built in San Antonio since April, 1866? How many have you bought and sold since the above date?

Cross-int'y 3rd. Who has helped you prepare your answers to the foregoing interrogatories? Who is present while you are answering the same?

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

JESUS HERNANDEZ AND KATHERINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70.

Suit pending in the circuit court of the United States for the western district of Texas.

Answers and depositions of Katherine Hernandez, residing at San Antonio, Bexar County, Texas, to the accompanying interrogatories, propounded to her in the above-entitled cause; taken before John Rosenheimer, a notary public in and for the county of Bexar, State of Texas, in accordance with the accompanying commission or agreement. Answers of the witness Katherine Hernandez.

To the 1st interrogatory she answers: I knew the complainant, Jesus Hernandez; he is my husband, and we were married in the year 1867. I got acquainted with him about a year previous to our marriage,
124 and I have known by sight only for some years previous to that. The defendant Isaac L. Lyon I do not know and I never did know him.

To the 2nd interrogatory she answers: I am one of the complainants in said cause. In the month of April, 1866, my name was Katherine Wefurg. Jesus Hernandez is my present husband, to whom I married in A. D. 1867.

To the 3rd interrogatory she answers: I am in possession of the lot described in the 3rd direct interrogatory, and I have held possession thereof since the purchase of the same by me in the month of March or April, A. D. 1866. On the first day of May, A. D. 1866, I moved in the house erected upon said lot, since which time I have occupied said house and lot as a homestead, and my possession of the said lot since the first day of May, A. D. 1866, was continuous, open, and notorious.

To the 4th interrogatory she answers: I took the first possession of said lot in the month of March or April, A. D. 1866, for the purpose of erecting a homestead upon the same by making immediately improvements thereon. I think the well was the first thing made upon the lot; this was done immediately after the purchase of the lot without
125 any loss of time. The claim which I had to the lot and to my taking possession of the same was this: I had bought the lot and had paid the purchase money in cash for the same.

To the 5th interrogatory she answers: I bought said lot from I. A.

Paschal, who at the time of making the sale to me acted as the agent of Isaac L. Lyon. I paid the purchase-money for said lot to said Paschal, as the agent of said Lyon's. The amount of the purchase-money I paid for said lot to said Paschal was seven hundred dollars ($700.00) in specie.

To the 6th interrogatory she answers: Improvements upon said lot were made by myself, also by myself and my deceased husband, as well as by myself and my present husband. Immediately after the purchase of the lot in 1866 my deceased husband & myself began to make improvements thereon. During the progress of the work my then husband died. I finished the work, and moved with my children in the house erected upon said lot in May, 1866, as my homestead. In the year A. D. 1868 myself and my present husband made again improvements upon said lot. Repairs were of yearly occurrence. The improvements upon
126 the said lot consist of a one-story dwelling-house, made of hard rock, and containing four rooms and a gal'ery; of a kitchen made of soft rock; of a stable made of pickets and lumber; of a privy and a fence; also a well. All the said improvements are in good condition, and their value is four thousand dollars coin.

To the 7th interrogatory she answers: At the time I bought said lot there were delivered to me by Judge I. A. Paschal (2) two deeds or title-papers. One of them was a deed or title-paper to said lot from Noocho to Lyon, and the other one was a deed or title-paper to said lot from Paschal, as the agent of Lyon, to me. Both of the deeds or title-papers I delivered or handed to Jacob Waelder, esq., one of my attorneys.

To the 8th interrogatory she answers: At the time I did purchase the said lot it was not worth as much as I paid for it. I only paid the $700.00 for the lot, because I wanted an eligible site for a homestead, and it was conveniently situated in reference to the location of where I kept a store at the time. I certainly paid even more than its full market value for the lot.

To the 9th interrogatory she answers: I do not recollect of anything else at the present time.

To the 1st cross-interrogatory she answers: As I have already
127 heretofore stated, the principal improvements were made in the year 1866 and 1868, and repairs were almost yearly made. I do not recollect the names of the parties who made the improvements for me. The mason-work of the house in 1866 was made by a Mexican or Spaniard, whose name I do not recollect, and who has also died since, as I am informed. His widow, I believe, lives yet in San Antonio. I knew her only by her name before marriage, Bernal. The kitchen was made by one Isidro, a Mexican, who yet lives in San Antonio, as I am informed. The improvements made in 1868 were made for me by one Brown, who now work' at some outpost or fort, as I am informed, but I do not know which. The improvements were made out of good material, and for further information I refer to my answers in that regard to the direct interrogatories. I do not know the size of the rooms. I have not got my bills paid for improvements. I just know that all the improvements are paid for, and that I kept no account of the same.

To the 2nd cross-interrogatory she answers: I do not know where the defendant Isaac L. Lyon has lived since April, 1866, nor has ever any
128 one told me where he lived in 1866, 1867, 1868, 1869, 1870, 1871, & 1872, and each of said years. Since the month of April, 1866 (since the improvements upon the lot in controversy were made), I have not built nor had built any house in San Antonio, nor have I bought any since then, but have sold one on Lareda street.

To the 3rd cross-interrogatory she answers: Nobody has helped me to prepare my answers to the accompanying interrogatories, and while I am answering the same there is no one present except M'r Rosenheimer, the notary, who took them and wrote them down.

KATHERINE HERNANDEZ.

Signed and sworn to before me on this the 27th day of December, A. D. 1873.

JNO. ROSENHEIMER,
Notary Public, Bexar County.

STATE OF TEXAS,
County of Bexar:

I, John Rosenheimer, a notary public in and for the county of Bexar, State of Texas, do hereby certify that the foregoing answers of Katherine Hernandez, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

Given under my hand and official seal, at office in San Antonio, this the 27th day of December, A. D. 1873.

[L. S.] JNO. ROSENHEIMER,
Notary Public, Bexar County.

129 The deed of Lino Arocha & wife to Isaac Lyon, filed in the law case of Isaac L. Lyons vs. Jesus & Katharine Hernandez, No. 1300, and filed in this cause, is endorsed, to wit: "Lina Arocha & wife. Deed to Isaac Lyon. No. 500. Ent'd book S, No. 1. Filed in my office for registration this 18th day of August, A. D. 1860, at 8 o'clock a. m. Sam. S. Smith, clerk co. court, B. Co.," and is in words, to wit:

Deed from Arocha & wife to Isaac L. Lyon.

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that we, Lino Arocha and wife, Encarnacion Urrutia, of the county of Bexar and State of Texas, for and in consideration of the sum of twelve hundred dollars to us in hand paid by Isaac L. Lyon, of the county of Bexar and State of Texas, the receipt whereof is hereby acknowledged, before the signing, sealing, and delivering of these presents, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, convey, and deliver unto the said Isaac L. Lyon, his heirs and assigns, all that tract or parcel of land lying and being in the county of Bexar, in the city of San Antonio, at the northeast corner of Soledad street, and of the fourth cross street or alley (running east and west) north of the main plaza of said city, beginning at the northeast corner of a lot of P. C. Taylor, on Soledad street; thence with line of Solidad street N. 2¾° W. 27¼ varas, to the corner of the above-mentioned alley; thence with said alley N. 88° W. 27¾ varas; thence S. 5¾° E. 27⅛ varas;
130 thence S. 87½° E. 26¼ varas to the place of beginning, together with all and singular the rights, members, hereditaments and appurtenances to the same belonging or in any wise incident or appertaining:

To have and to hold all and singular the premises above mentioned, unto the said Isaac L. Lyon, his heirs and assigns, forever.

And we do hereby bind ourselves, our heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said Isaac L. Lyon, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

In testimony whereof we have hereunto subscribed our names and affixed our seals, using scrawls for our seals, in the city of San Antonio, this sixteenth day of August, A. D. one thousand eight hundred and sixty.

LINA AROCHA. [L. S.]

her
ENCARNASION URRUTIA + DE AROCHA. [L. S.]
mark.

Signed, sealed, and delivered in presence of—

THE STATE OF TEXAS,
County of Bexar:

Before me, William H. Cleveland, a notary in and for said county, personally appeared the within named Lina Arocha and Encarnacion Urrutia, his wife, to me well known, who acknowledged that they each had signed, sealed, and delivered the instrument of writing on the reverse hereof, and they declared the same to be their act and deed for the purposes and considerations therein stated; and the said Encarnacion Urrutia having been examined by me privily and apart from
131 *from* her husband, and having the same fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed and delivered the same, and that she wished not to retract it.

In testimony whereof I hereunto sign my name and affix the impress of my official seal, at office in San Antonio, this sixteenth day of August, A. D. 1860.

W. H. CLEVELAND,
Not. Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

I, Sam. S. Smith, clerk of the county court of said county, do hereby certify that the instrument of writing on the reverse hereof, with its certificate of authentication, was filed for registration in my office the 18th day of August, A. D. 1860, at 8½ o'clock a. m., and duly recorded the 8th day of October, A. D. 1860, at 4 o'clock p. m., in the records of said county in Book S, No. 1, on pages Nos. 375 & 376.

Witness my hand and the seal of the county court of said county, at office in San Antonio, the day and year last above written.

[L. S.] SAM. S. SMITH,
Clerk County Court, Bexar County.

132 *Def't's depositions of Joseph Schmidt & others.*

Depositions of Joseph Schmidt, A. Earhart, & E. Hessler, endorsed "Received from P. office at Austin & filed Jan. 5, '74. M. Hopkins, cl'k."

JESUS HERNANDEZ & KATHERINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 72. In chancery.

Interrogatories to be propounded to Joseph Schmidt, Anthony Earhart, and Ernst Hessler, resident citizens of San Antonio, Bexar County, Texas, material witnesses for defendant, in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katherine Hernandez are complainants, and Isaac L. Lyon is defendant.

Int'y 1st. To each and all of the witnesses above named: Do you

know the parties complainants and defendants in the title to these interrogatories named or either, and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Int'y 2nd. To each of said witnesses: Where do you reside, and
133 how long have you resided there? What has been and what is your occupation since you have lived in San Antonio, Texas?

Int'y 3rd. To each and all of said witnesses: This bill is filed to recover title, or to establish the value of certain improvements alleged to be on a certain lot or piece of land in said city of San Antonio, Texas, described as follows, to wit: A lot on the northeast corner of Soledad street and of the fourth cross-street or alley (running east and west) north of the main plaza of the city of San Antonio; beginning at the northeast corner of a lot of P. C. Taylor, on Soledad street; thence with the line of Soledad street N. $2\frac{3}{4}°$ W. $27\frac{1}{4}$ varas, to the corner of the above-mentioned alley; thence with said alley N. 88° W. $27\frac{3}{4}$ varas; thence S. $5\frac{3}{4}°$ E. $27\frac{1}{8}$ varas; thence S. $87\frac{1}{2}°$ E. $27\frac{3}{4}$ varas, to the place of beginning. State whether or not you know the above-described property; if yea, how long have you known said property?

Int'y 4th. To each and all of said witnesses: State whether or not there has been any improvements put upon said property since April, 1866; if yea, you will please state what the improvements con-
134 sist of, and when they were put there; give the size of each room and building put upon said lot since 1866, and the character of finish outside and inside of each of said rooms; and state the material that each house or room is built of upon said lot since April, 1866, and what it would cost to put such improvements as above referred to upon said lot. If you are not sufficiently acquainted with the exact character of such improvements, will you please call upon Mr. & Mrs. Hernandez and ask them to allow you to inspect said improvements, before you answer these interrogatories, so that you may answer more accurately? And if they refuse to allow you to inspect said improvements, please state what reason they give for it, and their language in their refusal if they should do so.

Int'y 5th. Please state the present value of such improvements as may have been made on said lot since April, 1866, if any; and state as near as you can the date when said improvements were put there; and state the present condition they are in and the repair upon said lot; are they in a good or bad condition, including the fencing
135 around said lot, if any, and the present value of the fence around it, if any?

Int'y 6th. What is or would be a fair rent for the lot and improvements from April, 1866, to the present time, comparing it with the usual rents for such property in that part of the city of San Antonio?

Int'y 7th. What is the present value for the lot without reference to the improvements put thereon by complainants to compare it with the reputed value of other lots in the same vicinity? Please state fully.

Int'y 8th. Do you know any other matters or things touching the matters in issue in this cause, which may tend to the benefit or advantage of the said defendant therein? If yea, set forth the same and all the circumstances and particulars thereof fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

CHANDLER, CARLETON AND ROBERTSON,
Att'ys for Defendant.

We, the counsel and solicitors for the complainants in cause No. 40, chancery, in the U. S. circuit court, western district of Texas, of Jesus and Katharine Hernandez against Isaac L. Lyon, hereby waive
136 service, time, copy, and commission of and on the foregoing interrogatories, and agree that the same may be answered instanter before any officer authorized in Texas to take depositions, and that the answers when taken may be read in evidence on the trial of said cause, free of objection as to formality of taking and returning, but subject to all legal objections as to their admissibility, legality, or the competency of the testimony; and we further agree that the said answers may be read, under like waiver and restrictions, in causes 71, 72, 73, 74, 75, & 76, wherein Isaac L. Lyon is defendant, involving like questions as this cause, pending in the same court, except as to the value of rents & improvements in cases 71, 72, 73, 74, 75, & 76. This agreement is made to avoid the making of useless cost.

CHANDLER, CARLETON & ROBERTSON,
WALTON & GREEN, &
WAELDER & UPSON,
Solicitors for Complainants.

X-int's:

1. What are your relations with the complainants?
2. How far do you live from the lot described & the improvements thereon? How often have you seen the improvements? Who
137 erected them, and when? Do you know what they cost? Are you a builder or an architect.
3. If the lot had no improvement on it, for what would it rent? If you say for any particular sum, then say to what use it could be put. How & by what do you measure the value of the rents without the improvements?
4. When did you first examine the improvements? With whom have you talked about them & when?
5. Be fair & just in your estimate of value, & state what it is.

WALTON & GREEN,
WAELDER & UPSON,
For Comp't.

JESUS HERNANDEZ AND KATHARINE HERNANdez
vs.
ISAAC L. LYON. } No. 72.

Suit pending in the circuit court of the United States for the western district of Texas.

Answers and depositions of Joseph Schmidt, Anthony Earhart, and Ernest Hessler, residing in the city of San Antonio, Bexar County, Texas, to the accompanying interrogatories propounded to them in the above-entitled cause, taken before John Rosenheimer, no-
138 tary public, in and for the county of Bexar, State of Texas, in accordance with the accompanying commission or agreement.

Answers of the witness Joseph Scmidt:

To the 1st interrogatory he answers: I know complainant, Jesus Hernandez, and his wife, Katharine. The first I know since about 2 years and *and* his wife, Katharine, I have known for the last 8 years. Defendant Lyon I knew only by sight before the late war.

To the 2nd interrogatory he answers: I have resided in San Antonio since 1850, and during that time my occupation was and is yet that of a stone-mason and builder or contractor.

To the 3rd interrogatory he answers: I know the property described in the 3rd interrogatory, and have known it for the last 5 or 6 years.

To the 4th interrogatory he answers: There were improvements put upon said lot since April, A. D. 1866. The improvements consist of a dwelling-house, made of hard rock, having four rooms, plastered in and out side, floored, with doors, windows, and blinds, all of good size and well finished. The two front rooms are $19\frac{1}{2} \times 19\frac{1}{2}$, and the 2 rooms in the rear are $19\frac{1}{2} \times 16\frac{1}{2}$; an open gallery in the rear has $43\frac{1}{2} \times 7\frac{1}{2}$. In front of the house is a shingle awning. The gallery is paved with
139 flagging. There is also a kitchen made of soft rocks west of the dwelling-house; the size of the kitchen is $20\frac{1}{2} \times 16$. The kitchen is floored with flagging; the kitchen is plastered in and out side, and the kitchen as well as the dwelling are in good order. There is also a good well and a good fence upon the premises. There is also an old stable upon the lot. I do not know the precise time when these improvements were made, only that they were made since April, 1866, and it would cost about $4,800.00 coin to put up improvements as those above described.

To the 5th interrogatory he answers: Four thousand eight hundred dollars coin is the present value of said improvements, and all the improvements are in good order and condition.

To the 6th interrogatory he answers: I do not know.

To the 7th interrogatory he answers: I do not know.

To the 8th interrogatory he answers: I do not.

To the 1st cross-interrogatory he answers: I am acquainted with the complainants, and that is all. My relations with them are such and of that character as they are usually from one citizen to another, without being related; they are friendly. I have never had any dealings with the parties nor am I related to them.

140 To the 2nd cross-interrogatory he answers: I live about a quarter of a mile from said lot and improvements; I have seen the improvements often, but do not know how often; I do not know who erected them, nor when they were erected, except that they were made since April, 1866. I do not know what they cost, and I am a builder.

To the 3rd cross-interrogatory he answers: The lot without improvements would not rent for anything.

To the 4th cross interrogatory he answers: I examined the improvements the first time last Saturday the 27th December, 1873. I have not spoken or talked about them to any one.

To the 5th cross-interrogatory he answers: I am fair and just in the estimate of value and have stated what it is.

JOSEPH SCHMIDT.

Sworn to and subscribed before me this 31st December, 1873.

JNO. ROSENHEIMER,
Notary Public, B. C.

Answers of the witnesses Anthony Earhart:

To the first interrogatory he answers: I have no acquaintance with any one of them. The complainants I spoke to the first time when I went to examine their premises the other day.

141 To the 2nd interrogatory he answers: I reside in San Antonio, and have done so for the last 8 or 9 years; and my occupation now is and has been that of architect and builder.

To the 3rd interrogatory he answers: I have never paid any particular attention to said property, but I have noticed it frequently in passing.

To the 4th interrogatory he answers: So far as I can recollect, the first improvements were put upon said lot about the year 1866; I cannot give specific dates. On last Sunday, the 28th day of December, A. D. 1873, I went to the place and examined the premises and found the improvements to consist of a dwelling-house of hard rock, about 45 front and 34 deep, containing four rooms, and having a back gallery. The house is full the average finish of houses with shingle roofs, in San Antonio; also a little outbuilding of soft rock, about $14' \times 18'$, which is now a kitchen; this is very plainly furnished. There is also an old wooden building, used as stable or wood-house. There is also a good well, walled up with hard rock; there is a fence all around; part of it
142 a paling fence. It would cost about $4,000.00 coin—probably a little more—to put up such improvements as those referred to are—

To the 5th interrogatory he answers: The present value of said improvements is $3,500.00; the dwelling-house and well are in good condition; the other improvements only passable. The present value of the fence is from $100.00 to $125.00.

To the 6th interrogatory he answers: From $2,000.00 to $2,500.00, to include the keeping of the premises in good repair.

To the 7th interrogatory he answers: I cannot tell.

To the 8th interrogatory he answers: I do not.

To the 1st cross-interrogatory he answers: I never spoke to them before last Sunday morning.

To the 2nd cross-interrogatory he answers: I live about ¾ of a mile from said lot and improvements; I have passed by them probably 150 times each year; do not know who erected them, nor when they were erected (except that it was about 1866); do not know what they cost, and I am an architect & builder.

To the 3rd cross-interrogatory he answers: I do not know.

To the 4th cross-interrogatory he answers: I first examined the
143 improvements on the 28th Dec'b'r, 1873. I have talked with no one about them, except that I told the complainants that I wished to examine the said improvements, when I went there for that purpose, on the 28th Dec'b'r last.

To the 5th cross-interrogatory he answers: I think that I have given a just and fair estimate of value.

A. EARHART.

Sworn to and subscribed before me this 3rd January, A. D. 1874.

JNO. ROSENHEIMER,
Notary Public, B. C.

Answers of the witness Ernest Hessler:

To the 1st interrogatory he answers: I do; I have known complainant, Katharine, for about 12 years, and her husband, Jesus Hernandez, for about 6 years, and the defendant, Lyon, I knew before the Confederate time.

To the 2nd interrogatory he answers: I reside in San Antonio, and have lived there for the last twenty years. I am and have been a builder and contractor.

To the 3rd interrogatory he answers: I know the said property for the last 5 or 6 years.

To the 4th interrogatory he answers: I think the improvements upon said lot were put there since April, 1866. I have ex-
144 amined them and find them to consist of a one-story dwelling-house of hard rock, 45¹ by 36¹, and having four rooms. The house has a shingle roof, and is well finished. A kitchen 18¹ × 20¹, of soft rock, well finished; a well walled up with hard rock. The dwelling-house has a gallery about 8¹ wide in the rear and a tin awning in front. Part of the yard in the rear of the house is paved with flagging; there is also a common fence upon the lot; that is all I recollect. To put up improvements as those referred to would cost about $5,000.00.

To the 5th interrogatory he answers: The said improvements are in fair condition and repair, and their present value is about $4,500.00.

To the 6th interrogatory he answers: I cannot tell.

To the 7th interrogatory he answers: I do not know.

To the 8th interrogatory he answers: I do not.

To the 1st cross-interrogatory he answers: I have no particular acquaintance with them. I know them by name and by sight, and have done so for some time.

To the 2nd cross-interrogatory he answers: I live about ¼ of a mile from the said premises. I have seen them often; cannot say how
145 often; almost daily. Do not know who erected them, nor when they were erected. Do not know what they cost, and I am a builder.

To the 3rd cross-interrogatory he answers: I do not believe that the lot without improvements would rent for anything.

To the 4th cross-interrogatory he answers: I examined the said improvements first this morning, and the only persons I talked to about them were two young girls whom I found in the house, and to whom I expressed a wish to examine the improvements.

To the 5th cross-interrogatory he answers: I think that the value I gave is fair and just. I stated the value to the best of my belief, and, I think, the figures which I gave are fair and just.

ERNEST HEISSLER.

Sworn to and subscribed before me this 3rd day of January, A. D. 1874.

JNO. ROSENHEIMER,
Notary Public, B. C.

STATE OF TEXAS,
County of Bexar:

I, John Rosenheimer, a notary public in and for the county of Bexar, State of Texas, do hereby certify that the foregoing answers of Joseph Scmitt, Anthony Earhart, and Ernest Hessler, the witnesses before named, were made before me, and were sworn to and subscribed before me, by the said witnesses, respectively.

Given under my hand and official seal, at office, in San Antonio, this the 3rd day of January, A. D. 1874.

[L. S.] JNO. ROSENHEIMER,
Notary Public, B. C.

146 DEFENDANT'S TESTIMONY.

Depositions of J. H. Kampman.—Rec'd from P. O. & filed Jan'y 5, 1874.

Depositions of J. H. Kampman, endorsed Rec'd from p. office at Austin, & filed January 5, 1874. M. Hopkins, cl'k."

JESUS HERNANDEZ AND KATHERINE HERnandez
vs.
ISAAC L. LYON. } In chancery.

Interrogatories to be administered to J. H. Kampman and Ignaz Faska, witnesses in a certain cause now pending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katherine Hernandez are complainants, and Isaac L. Lyon is defendant, on the part of said complainants.

Interrogatory 1. Do you know the parties, complainants and defendant, in the title to these interrogatories named, or either, and which of them, and how long have you known them respectively, or such of them as you do know? Declare the truth and your utmost knowledge and remembrance and belief herein.

Int. 2. Do you or not follow any business, occupation, or profession? If yea, state how long you have been engaged in such business, occupation, or profession; whether you have been engaged therein in the
147 city of San Antonio, in Texas, and how long.

Int. 3. Do you or not know the lot of land in controversy in this cause, it being situated in said city of San Antonio, at the corner of Soledad street and the fourth cross-street or alley (running east and west) north of the main plaza of said city? If yea, state in whose actual possession said lot has been since the year 1866, what was then its value, who has occupied it since the month of April of that year, and whether or not such occupation was open and notorious.

Int. 4. If you say, in answer to the foregoing interrogatory, that the complainants have been in possession of said lot, you will then, after having stated the length and character of their possession, state also whether or not the said complainants have made any improvements upon the same. If yea, when were such improvements made, what are they, and what is their present value, what was their value when made, and what was their value on or about the 18th day of December, 1872?

State also what such improvements consisted of on the said last-
148 mentioned day. Set forth all the circumstances and particulars thereof fully and at large according to the best of your knowledge, remembrance, and belief.

Int. 5. Do you or either of you know any other matters or things touching the matters in issue in this cause which may tend to the benefit or advantage of the said complainants therein? If yea, set forth the same and all the circumstances and particulars thereof fully and at large according to the best of your knowledge, remembrance, and belief as if you had been thereto particularly interrogated.

WALTON & GREEN,
WAELDEN & UPSON,
Att'ys for Complainants.

149 We, the counsel and solicitors of the def't in cause No. 70, chancery, in U. S. circuit court, western district of Texas, of Jesus and Katherine Hernández against Isaac L. Lyon, here waive service, time, copy, and commission of and on the foregoing interrogatories, and agree that the same may be answered instanter before any officer authorized in Texas to take depositions, and that the answers when taken may be read in evidence on the trial of said cause, free of objection as to formality of taking and returning, but subject to all objections as to the admissibility or the competency of the testimony; and we further agree that the said answers may be read, under like waiver and restrictions, in causes 71, 72, 73, 74, 75, & 76, wherein Isaac L. Lyon is defendant, involving like questions as this cause pending in the same court, except as to the value of rents and improvements in case 71, 72, 73, 74, 75, & 76. This agreement is made to avoid the making of useless costs.

CHANDLER, CARLETON & ROBERTSON,
Solicitors for Defendant Lyon.

150 JESUS HERNANDEZ AND KATHERINE Hernandez
vs.
ISAAC L. LYON. } No. 70. In chancery.

Cross-interrogatories to be propounded to J. H. Kampmann and Ignaz Faska.

Cross-int'y 1st (to both of said witnesses). If in answer to the direct interrogatories you have stated that you know the property therein described and you have stated the value of the lot in April, 1866, please state the present market value of said lot as compared with such lots in the same vicinity are now worth, considering the further fact that it is a corner lot, *as compared with what such lots in the same vicinity are now worth, considering the further fact that it is a corner lot;* and state if it is not true that the lot enquired about is a corner lot; if so, then state if it is not true that corner lots are worth more, and would sell for a better or higher price on account of its being a corner lot.

151 Cross-int'y 2nd (to both of said witnesses). If in answer to the 4th direct interrogatory you have stated that the complainants have made improvements on said lot, please be particular and state when each house or room or out-building or fence was made on said lot; give the date or dates when it was done. Did you or either of you put said improvements on said lot? Please state what kind of material was used in making said improvements; was it made of adobe, rock, or wood, or part of each? State the size of each room erected or put upon said lot, and state how it is finished outside and in. If you don't know the size of each room put there by complainants, please go and measure them, and please be certain that you measure and report only the rooms put there by complainants.

Cross-int'y 3rd (to both of said witnesses). Please state how you know that the complainants made the improvements on said lot that have been put there; did you see and know who did it? If not, please state who told you and when they told you about it.

152 Cross-int'y 4th. What is the present condition of said property; is it in good or bad repair? We mean house, out-houses, and the fence around said lot, if any. What is the fence now around said lot worth?

Cross-int'y 5th (to both of said witnesses). What would be a fair rent

for the place for each year since April, 1866, up to the present time, compared with the prices that such property in that part of the city has been rented for? Please be particular and answer each of the foregoing questions propounded to you in the foregoing cross-interrogatories.

Cross-int'y 6th (to both of said witnesses). Is it not true that the improvements on said lot are out of repair at this time and worth greatly less than they were when put there? Is it not true that the place is now in what may be called a dilapidated condition? We as' you these questions because we have recently had the property examined from the streets.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Defendant.

153 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared J. H. Kampman, of said county, to me well known, who being by me duly sworn to true answers make to the interrogatories propounded to him in a suit now pending and at issue in the circuit court of the United States for the western district of Texas, No. 70 on the docket thereof, wherein Jesus Hernandez and Katherine Hernandez are plaintiffs, and Isaac L. Lyon is defendant, responds as follows, to wit:

To int. 1st he answers: I know both parties, plaintiffs & defendant, for about ten years.

To int. 2nd. I have a builder and contractor in San Antonio since about twenty-three years.

To int. 3d. I do. I think it was in possession of Hernandez & wife since 1866. I saw them occupy it. I do not know the value of the lot at that time, viz, April, 1866. The occupation of the lot by Hernandez & wife was open and known publicly.

To int. 4th. I know that complainants have built the house now standing on the lot shortly after buying, but can't state the time
154 exactly. The house and improvements are worth about four thousand dollars, and were worth that sum all the years. The improvements consisted December 18th, 1872, of dwelling-house and out-houses, as they were originally built, and now at present stand.

To int. 5th. I do not.

To 1st X-int. I think that the lot, if vacant, would bring to-day about 800 to 1,000 dollars. A corner lot always is worth more, and I have taken this in consideration by my valuation of this corner lot.

To 2nd X-int. I don't know. I made none of the improvements. So far as I know the houses are built of rock; do not know the dimensions of the different rooms.

To 3rd X-int. I saw it myself when the house was built, and complainants give the directions as to how they wanted it built.

To 4th X-int. It is in good repair; don't know the value of the fence.

To 5th X-int. It would, I believe, have rented during all the years for an average of about 18 or 20 dollars per month. The lot, if vacant, would have rented for nothing.

To 6th X-int. I don't think so. It is not.

J. H. KAMPMAN.

155 THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing an-

swers of the witness, J. H. Kampman, were taken, sworn to, and subscribed before me this 3d day of January, A. D. 1874.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

156 DEF'T'S TESTIMONY.

Exhibit A to answers and deposition of Isaac L. Lyon.

The deposition of Isaac L. Lyon is endorsed, "Received from p. office at Austin & filed January 9th, 1874. M. Hopkins, cl'k."

Answers and depositions of Isaac L. Lyon, filed January 9th, 1874. M. Hopkins, cl'k.

Which are in words as follows:

MONTEREY, *August 24th*, 1865.

I. A. PASCHAL:

MY DEAR SIR: I am just in receipt of a letter from M'r Bennett, informing me that he has placed all my papers, for safe keeping, in your possession; in better or safer hands he could not have given them. The position you have occupied during the past four years of the war is a very enviable one, as glorious as it has been dangerous. I congratulate you upon the issue. I am sure you have no reason to regret your decision to abide by the Union. I trust you will be rewarded in proportion as traitors shall be cursed. We have a heard of Texas traitors in Mexico at the present time. I can say but little. I am unable to go to San Antonio at present; my family are sick in the North, and demand my presence there. M'r Kinney's death leaves a large
157 business in my hands to be settled. I wish you to manage as you would with your own. If an opportunity offers to sell everything I have, would be glad to sell. It may be parties will come into San Antonio who will be glad to purchase my gass-stock and real estate. I shall be glad, if you find time to write to me, if you will give me a discription of affairs as they exist at present. I shall probably remain here 2 months yet. I notice you have a note of M'r Fonda's belonging to me. He left some stock in the hands of his adopted son; can you not find out what has become of it; and, if possible, get hold of it as security? Can you tell me whether I can collect notes that have been paid by parties in Confed. paper to N. O. Green? I do not see how the payment, under such circumstances, can release them any more than payment to N. O. Green of the am't of Northern indebtedness can release a merchant from obligation to pay his Northern creditor. I enclose a letter for my wife. It is impossible to send letters by Matamoras; the road has been blockaded for a long time. If you have regular mail, I shall be greatly obliged if you will mail this letter. If no mail, will you do me the favor to send by private hands to New Orleans?

Most resp'y, yours,

I. L. LYON.

158 In circuit court of the United States for the western district of Texas, at Austin.

JESUS HERNANDEZ & KATHARINE HERNANDEZ *vs.* ISAAC L. LYON. } No. 70.

Interrogatories to exhibit on the part of the said defendant and to the said defendant Isaac L. Lyon.

Interrogatory first. Do you know the parties complainants and defendants in the title to these interrogatories named, or either of them, and which of them, and how long have you known them, respectively, or such of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Interrogatory second. State whether or not you are the defendant in the above-stated cause; if yea, state where you now reside, and where you resided since the year 1861, and the length of time you have resided in each place.

Interrogatory third. The complainants have brought their bill of complaint against you to perfect what they allege to be an equitable title to the following-described lot or tract of land in the city of San Antonio, Bexar County, Texas, bounded as follows, to wit. "A lot on the northeast corner of Solidad street, and of the fourth cross street or
159 alley (running east and west) north of the main plaza of the city of San Antonio, beginning at the northeast corner of a lot of P. C. Taylor, on Solidad street; thence, with the line of Solidad street, N. 2¾° W. 27¼ varas, to the corner of the above-mentioned alley; thence, with said alley, N. 88° W. 27⅞ varas; thence S. 5¾° E. 27⅛ varas; thence S. 87½° E. 27⅞ varas, to the place of beginning." Which they allege the complainant Katharine Hernandez, then Katharine Wessing, on the 24th day of April, 1866, purchased from I. A. Paschal, as your agent, under and by virtue of the authority contained in a letter written by you to the said I. A. Paschal, dated 24th day of August, 1865. A copy of said letter is hereto appended and marked "Exhibit A." State whether or not you ever authorized the said I. A. Paschal to sell and convey said lot, or to sell it without the authority to execute a deed to it, either verbally or in writing, or any other property that you owned in San Antonio or elsewhere; if yea, state when, how, and in what manner you did so. And state whether or not you ever authorized the said I. A. Paschal to receive any purchase-money for said lot from the complainants or either of them, or any other party or parties,
160 or to pay out the same, or any part thereof; and state when you first heard of the alleged sale by Paschal, and the purchase by the complainant, Katharine Hernandez.

Interrogatory fourth. State whether or not you ever authorized or empowered the said I. A. Paschal to receive money from any one and appropriate it to the payment on the amount assessed on your gass-stock in San Antonio or for any other purpose.

Interrogatory fifth. If the said I. A. Paschal ever did attempt to sell the lot in controversy in this suit, as your agent, or any other property that you owned in Texas, and received the money therefor, and applied the same or any part thereof to the payment of assessments made upon your gass-stock, state whether or not you have at any time since the said I. A. Paschal made said sale and payment or payments, ratified or in any manner acquiesced in any of the aforesaid acts of the said I. A. Paschal, and state whether or not you ever did represent to any party

or parties that the said I. A. Paschal was your agent or attorney, with authority to sell or convey the lot in controversy, or any other
161 property that belonged to you; if not, state otherwise.

Interrogatory sixth. State whether or not, after you had written the letter dated the 24th of August, 1865, to the said I. A. Paschal, or at any other time before or since that date, you regarded or treated the said I. A. Paschal or recognized him as your agent or attorney to sell and convey the lot in controversy, or any of your property.

Interrogatory seventh. State whether or not the said I. A. Paschal ever had any right or authority, either written or verbal, directly or indirectly, from you to sell said lot or execute a deed to complainants for the same, or to receive any money therefor in your name or for or on your account, or any other property that you owned in Texas.

Interrogatory eighth. State whether or not you ever ordered, authorized, empowered, or directed the said I. A. Paschal to deliver your title deeds to the lot in controversy or any other titles or papers that belonged to you to the complainants or any one else. And state whether or not you have ever acquiesced in the act of the said Paschal, if he did so deliver said title deeds or papers to complainants or any one else.

162 Interrogatory ninth. State whether or not from your knowledge of the said I. A. Paschal's financial capacity, and his general manner of doing business, you would have been willing to entrust him with power or authority to sell property, execute the deeds, and receive the money therefor; and state your reasons for what you may or may not have been willing to do in the premises.

Interrogatory tenth. State whether or not, since the date when you purchased the lot in controversy, you have ceased to regard said lot as your own property, or ceased to claim the same as your own. And state whether or not you have by word or act acquiesced in the alleged sale by the said I. A. Paschal to the complainants or any other party.

Interrogatory eleventh. State when you was last in San Antonio, Texas, all the circumstances that induced you to leave, the manner in which you left, and what occurred at or about the time you left. If you received any information that you would be in danger of bodily harm, state how and from whom you obtained said information. Give the names of each person, and state where the parties lived at that time.

163 Interrogatory twelfth. State whether or not you had any reason for not returning to San Antonio, Texas, and look after your property soon after the war ceased. State fully the reason why you did not do so, if any in fact existed.

Interrogatory thirteenth. Where were you during the whole of the year 1863? The complainants charge in their bill that on the 18th of April, 1863, you were assessed 2½ per cent. on your gass-stock in San Antonio, Texas; that on the 31st of October, 1865, you was assessed the further sum of $1,475; on the 31st day of March, 1866, the further sum of $1,475.00; on the first of March, 1867, the further sum of $2,360.00 on your gass-stock. State whether or not you had any notice of the aforesaid assessments; if yea, when, how, and from whom you received it. Please give as near the dates when you first had notice of each one of the aforesaid assessments as you can. State whether or not you ever have at any time acquiesced in any payment or payments that the said I. A. Paschal may have made, if any, on the assessments alleged to have been upon your shares of gass-stock, or ratified any of his acts in
164 so doing, or acknowledged his authority to do so.

Interrogatory fourteenth. State whether or not you ever in any

manner, shape, or form, directly or indirectly, verbally or in writing, acquiesced in the possession or alleged claim or title of complainants to the lot in controversy, or any other party or to any other property claimed by purchase from the said I. A. Paschal.

Interrogatory fifteenth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CHANDLER, CARLETON & ROBERTSON,
Solicitors for Defendant Lyon.

We, the undersigned, counsel and solicitors for the complainants in the above stated cause, hereby agree that the answers to the foregoing interrogatories and the crosses hereto attached, propounded to the witness, Isaac L. Lyon, may be taken to the originals, without filing or com-
165 mission or the ten days' notice, by any clerk of the United States court or notary public in the State of Michigan, and returned in the same manner that depositions are returned under the laws of the State of Texas, and that the depositions may also be read in causes Nos. 71, 72, 73, 74, & 75, wherein the said Isaac L. Lyon is defendant, in the same manner as they could have been if they had been taken in each case, subject only to the admissibility of the testimony, if the depositions of said witness had been legally taken in each case. This agreement is made for the purpose of saving the expense of taking the depositions of said witnesses in each one of the foregoing numbered cases. And it is further agreed that all the testimony given by the said witness, Isaac L. Lyon, in regard to the real estate described in these interrogatories, shall be held to apply to the real estate described in the causes heretofore described & numbered, subject however to all such legal objections as could be taken were said answers taken in each of said cases.

WALTON & GREEN,
Att'y' for Comp'ts.

166 Interrogatories to be administered for the cross-examination of the before-named defendant, Isaac L. Lyon, to be produced, sworn, and examined on the part of the said defendant, in a certain cause now depending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katharine Hernandez are complainants, and the said Isaac L. Lyon is defendant.

Cross-interrogatory 1. Did you not, on the 24th day of August, 1865, write and forward to Judge I. A. Paschal the letter, a copy of which is attached to the direct interrogatories, and have you not been aware, since that time, of the contents of said letter? Was not the original of said letter wholly written and signed by you? Did you not forward it to Judge Paschal from Monterey, and did you not intend to give him all the authority which said letter contains in and about your business and interests in San Antonio?

Cross-int. 2. Did you not, on the 22d day of May, 1861, make and execute a power of attorney to W. A. Bennett, of San Antonio, Texas, authorizing him, the said Bennett, to take charge of, possess, and
167 control all your property and estate of every sort, real, personal, and mixed, choses in action, and assets, and for you, and in your name, to hold and control, or sell, transfer, and convey the same; and

did not said Bennett, under said power of attorney, act as your agent or attorney in fact; and was not your letter, above-mentioned, written on the 24th day of August, 1865, to Judge Paschal, in consequence of a letter to you from said W. A. Bennett, dated San Antonio, July 12, 1865, in which letter said Bennett informs you that he was about to leave San Antonio, and that he would turn over your papers and stock (meaning gas-stock) to Judge Paschal, and that said Paschal would act as your attorney?

Cross-int. 3. Did you, or not, at the time you left San Antonio, own stock in the San Antonio Gas Company? If yea, state how many shares of such stock you owned, whether or not it was paid up, and if not paid up how much was paid on each share, and how much on each share remained unpaid.

Cross-int. 4. Did not W. A. Bennett, in his letter above-mentioned, dated July 12, 1865, also inform you that a call of 2½ per cent. on the gas-stock had been made, for the purpose of keeping the works in repair, and that the assessment on your stock amounted to fifteen hundred dollars? If yea, state whether or not you made any provision for the payment of said assessment; and, if yea, in what manner did you provide for its payment? And if you say that you did not provide for the payment of the assessment above mentioned, or for any other subsequently made, then state whether or not you left funds or money in the hands of your agent, Bennett, at the time you left San Antonio? If yea, state how much money you left with said Bennett. State the amount of cash you left in his hands at that time.

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Cross-int. 5. Did you not, on or about the 3rd of October, 1866, write to W. A. Bennett, inquiring of him what Judge Paschal had done with your real estate and gas stock, and whether he had disposed of them; and did not said Bennett reply to you under date of December 3, 1866, that as soon as he could get up he would "see Judge Paschal and ascertain what he had done, and the prospect of disposing of your real estate and gas-stock?

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Cross-int. 6. Did not Judge Paschal, prior to his death in February, 1868, and during the year 1867, advise you of the sale of the lot in controversy and other real estate of yours in San Antonio, and that he had appropriated the proceeds of such sales to the payment of assessments made on your gas-stock? And did not said Paschal send to you a statement of your affairs in San Antonio, of the disposition of your real estate, and the appropriation of the proceeds of sales made by him through the hands of M'r Geo. W. Brackenridge, the president of the San Antonio National Bank? And did not W. A. Bennett, under date of March 11th, 1868, write to you that such a statement had been sent to you through M'r Brackenridge?

Cross-int. 7. Did you not, on the second day of January, 1867, write to W. A. Bennett, inquiring in relation to your affairs in San Antonio, and did not said Bennett, on the 14th of April, 1867, write and inform you as follows: "I answered soon after receipt of same (meaning your letter); also saw Judge Paschal, and he wrote you fully on the subject of gas-stock and real estate. He is anxiously expecting to hear from you on the subject." * * "I assist Paschal in regard to your business, and hope his acts will be satisfactory to you under the circumstances"?

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Cross-int. 8. Did not Judge Paschal, at various times after the 24th day of August, 1865, write to you in relation to your gas-stock and real estate in San Antonio? And did you not also write to him on the same subject? If yea, and you now have the letters of Judge Paschal in your

possession, you will attach the originals to your answer to these interrogatories. You will also please attach the statement mentioned in M'r Bennett's letter to you of March 11, 1868.

Cross-int. 9. Did you not have a conversation with John Fries, of San Antonio, either at San Antonio or in Monterey, Mexico, in which you proposed to sell him the lot in controversy? And did not you say to John Fries in that conversation that "If you (Fries) can find a purchaser
171 I will leave everything in the hands of Judge Paschal," or words to that effect? And did you not in that and other conversations with said Fries point out Judge I. A. Paschal as your agent or attorney?

Cross-int. 10. Did you not know that your title-deeds have been delivered to and were in the hands of I. A. Paschal when you wrote your letter to him of August 24, 1865?

Cross-int. 11. If you say, in answer to the 12th direct interrogatory, that you did not return to San Antonio after the war to look after your property because you were afraid to do so from any cause, you will then please state what cause of fear there was. Was it or not safe for Union men to return to San Antonio after the close of the war? If yea, why could you not have returned? And if nay, then state where and what danger there was, from whom it was to be feared, and name, if you can, any one or more of the Union men who returned to San Antonio after the war, and were they molested or in any manner interfered
172 with? And if you cannot name any one who was molested or interfered with, then state fully and particularly the reason or reasons why your return would have been unsafe.

Cross-int. 12. State when you were first informed, and by whom, of the sale of the lot in controversy, and other property, by Judge Paschal; and when and by whom and in what manner were you first informed of the asssessments upon your gas-stock and the appropriation of the proceeds of the sale of your lots to the payment of those assessments? Declare the truth, and your utmost knowledge and remembrance herein.

Cross-int. 13. If you say, in answer to the 10th direct interrogatory, that you have never ceased to regard the lot in controversy as your own property since you purchased the same, then please state also whether or not you have paid any taxes upon the same since the year 1866, and for that year. If yea, to whom or through whom did you pay your taxes? And if nay, what was there to prevent the payment of taxes since that time by you, and for what reason did you not pay said taxes?

173 Cross-int. 14. When, from whom, and in what manner did you first learn that the complainants in this cause were in possession of the lot in controversy? And when, from whom, and in what manner did you first learn that said complainants had made valuable improvements upon said lot? Declare the truth, and your utmost knowledge and remembrance herein.

Cross-int. 15. When, from whom, and in what manner did you first learn that the complainants in this cause were in the actual possession of the lot in controversy? And when, and in what manner, if at all, did you first learn that said complainants had paid all taxes upon said lot for and since the year 1866? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Cross-int. 16. Were you or not aware that taxes were levied upon the lot in controversy, and other property, by the laws of the State of Texas, for State, county, and city purposes? And did you or not at any time, since the year 1865, make inquiry of any tax-collector of Bexar County, or the city of San Antonio, as to the amount of taxes assessed

174 upon your property and due upon the same? Declare the truth, and your utmost knowledge and remembrance herein.

Cross-int. 17. Was W. A. Bennett your agent? If yea, what power did he have as such? If Paschal (I. A.) was not your agent after Bennett ceased to be, what was the meaning of your letter to him of date 24 Aug., 1865? What was Paschal to do under & by virtue of said letter? Please be explicit. Did you have any agent at San Antonio after Aug. 24, 1865? Who was it?

Cross-int. 18. Were you not after the close of the war desirous of selling out your interest in Texas, & particularly at San Antonio? If yes, did you have any one on the ground to effectuate your desires? If yes, who?

Cross-int. 19. Interpret your letter to I. A. Paschal, and declare explicitly what you meant by said letter, and what object you had in view in writing it. Did you write what you meant, & did you mean what you wrote?

WAELDER & UPSON,
WALTON & GREEN,
For Comp't.

175 STATE OF MICHIGAN,
Wayne County, ss:

By authority of the agreement and stipulation accompanying the interrogatories hereto annexed by which the answers to said interrogatories and cross-interrogatories propounded to the witness, Isaac L. Lyon, might be taken before me as a notary public of the State of Michigan, and returned in the same manner that depositions are returned under the laws of the State of Texas, in a case now pending in the circuit court of the United States for the western district of Texas, at Austin, in favor of Jesus Hernandez and Katharine Hernandez, plaintiff, against the said Isaac L. Lyon, defendant, I, C. E. Warner, a notary public of said State of Michigan, caused to come before me, at my office at the city of Detroit, in said State, the said Isaac L. Lyon, therein named, a resident of said city of Detroit, who being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories in said case propounded to him, answered the same as follows:

176 In the circuit court of the United States for the western district of Texas, at Austin.

JESUS HERNANDEZ & KATHARINE HERNANDEZ
vs.
ISAAC L. LYON. } No. 70.

Answer to interrogatory first. I do not know either of the parties named as complainants in this suit; never heard their names mentioned to my knowledge until after this suit was commenced.

Answer to interrogatory second. I am the defendant in the above-stated cause & now reside in the city of Detroit, Michigan. I resided since 1861 in Mexico, in the city of Monterey, until the fall of the year 1865, when I removed to the city of New York & remained there until the fall of the year 1867, when I removed to the city of Detroit.

Answer to interrogatory third. I never authorized I. A. Paschal, of San Antonio, Texas, to sell the lot described in this third interrogatory, or to sell without the authority to execute the deed to it either verbally or in writing; neither did I authorize said Paschal in any way to sell

any property owned by me in San Antonio or anywhere else; and I utterly disclaim ever intending by any writing or in any other
177 way to give said I. A. Paschal any right or authority to sell any property for me, or to receive any purchase-money for the lot described in this third interrogatory from the above-mentioned complainants or either of them, or any other party or parties, or to pay out the same or any part thereof. I never heard of the alleged sale by Paschal & the purchase of said lot by the complainant Katharine Hernandez. I did hear from some person, I think in the summer of 1867, that Paschal had sold some of my real estate in San Antonio, but no particulars.

Answer to interrogatory fourth. I never authorized or empowered the said I. A. Paschal to receive money from any one and appropriate it to the payment on the amount assessed on my gas-stock in San Antonio, or for any other purpose.

Answer to interrogatory fifth. If said I. A. Paschal ever did attempt to sell the lot in controversy in this suit, as my agent, or any other property that I owned in Texas, & received the money therefor & applied the same or any part thereof to the payment of assessments made upon my gas stock, I have never ratified or in any manner acquiesced
178 in such sale or payments or in any of the aforesaid acts of the said I. A. Paschal. And I never represented to said I. A. Paschal that he was my agent, or to any party or parties that said I. A. Paschal was my agent or attorney, with authority to sell or convey the lot in controversy or any other property that belonged to me.

Answer to interrogatory sixth. After writing the letter dated the 24th of August, 1865, to the said I. A. Paschal, neither before or after writing said letter have I regarded or treated the said I. A. Paschal or recognized him as my agent or attorney to sell and convey the lot in controversy, or any of my property.

Answer to interrogatory seventh. The said I. A. Paschal never had any right, either written or verbal, directly or indirectly, from me to sell said lot, or execute a deed to complainants for the same, or to receive any money therefor in my name or for or on my account, or any other property that I owned in Texas.

Answer to interrogatory eighth. I never ordered, authorized, empowered, or directed the said I. A. Paschal to deliver my title-deeds to the lot in controversy, or any other titles or papers that belonged to
179 me, to the complainants *as* to any one else; and I never acquiesced in the act of said Paschal, if he did so deliver said title-deeds or papers to complanants or any one else.

Answer to interrogatory ninth. From my personal knowledge & from the general reputation of said Paschal's financial capacity, and his general manner of doing business, I would not have been willing to intrust him with power and authority to sell property, execute the deeds, and receive the money therefor. The said I. A. Paschal was reported to be heavily in debt, and always seemed to me to be troubled concerning his personal affairs; was a very careless man in ordinary business affairs. He did not possess a good reputation among the business men of San Antonio in regard to money matters, and my impressions of the man, while I resided in San Antonio, were not such as to warrant me in intrusting him with the responsibility of selling any property and receiving the money therefor. I had confidence in him as a lawyer, and thought he might find a purchaser or purchasers for my property or a part of it. If so, he could and would communicate with me, and I could then arrange concerning sale and payments.

180 Answer to interrogatory tenth. Since the date when I purchased the lot in controversy I have never ceased to regard said lot as my own property, nor ceased to claim the same as my own, nor have I ever at any time, by either word, act, or inuendo, acquiesced in the pretended sale by the said I. A. Paschal to the complainant, or any other party.

Answer to interrogatory eleventh. When the war broke out it was known that I was what was called a Union man, a man opposed to the s-ocalled Confederate Government. I had been called an abolitionist. An old man by the name of Mitchell had so reported me to the society known as the Knights of the Golden Circle, a branch of which was organized in San Antonio. About the middle of May, 1861, a general meeting of this society, composed of representatives from all parts of the State of Texas, was held in San Antonio. On the night of the twenty-third of May, 1861, about half past seven o'clock, one W'm Groesbeck, a resident of San Antonio, came to the residence of W. A. Bennett, where I was living. I was lying down on the sofa; said Bennett, was in the same room. Groesbeck requested
181 Bennett to shut the windows down. He, Groesbeck, then told me that he was on his way with his wife to prayer-meeting, and met Jack Wilcox, a lawyer, living in San Antonio, who told Groesbeck that a certain number of the Knights of the Golden Circle—Wilcox was a member of this society—had resolved to come to Bennett's house that night and take me out and hang me. After much cousultation, it was decided that I had better go over to the Manyer Hotel and remain that night. I did so. Bennett and Groesbeck both agreed to make due inquiry the next day and let me know whether there was any truth in the statement of Wilcox, & whether they deeemed it necessary for me to leave the city and State. In the morning Bennett called to see me, and informed me that some men were at his house the evening previous and asked for me. My friends all thought my life was in danger, and recommended me to leave the State. I then directed a power of attorney to be drawn in favor of W. A. Bennett, who was my partner in business, and
182 I signed the same. I did not have time to enumerate and specify the different kinds of property and varied securities which were turned over to said Bennett, which belonged to me individually, and in which said Bennett had no interest. With great difficulty I managed to escape and find my way out of the State, leaving in the hands of said Bennett all my property, consisting of real and personal effects, notes, mortgages, and State bonds, a herd of mules, gas-stock, and several lots in the city of San Antonio. I supposed that said Bennett could protect my interests in the above property, and, having the power of attorney, could secure it from confiscation by the so-called Confederate Government. I left Texas at that time, May 22d, 1861, with barely money enough to pay my expenses, and never received a dollar from there until after the war, in 1867, I think, when W. A. Bennett sent me either 1,500 or 2,000. In the fall of 1861 I went to Monterey, Mexico, where I learned that my property was confiscated.

Answer to interrogatory twelfth. After the war ceased, to wit, in the years 1865 and 1866, I was informed and believed that my life
183 would be in imminent danger if I returned to San Antonio to look after and attempt to recover the property that I had been robbed of. I think I was in Mexico during the year 1863, the most of that year, if not all. I have no recollection that I ever received any notice of the assessments referred to in the thirteenth interrogatory. I did hear from some source that assessments had been made, but do not

think I ever received any notice from the company through its officers or from any authentic source. I never at any time acquiesced in any payment or payments that the said I. A. Paschal may have made upon the assessments alleged to have been made upon my shares of gas-stock, and I never ratified any of his acts in so doing, or acknowledged his authority to do so.

Answer to interrogatory fourteenth. I never did in any manner, shape, or form, directly or indirectly, verbally or in writing, acquiesced in the possession or alleged claim or title of complainants to the lot in controversy or any other party, or to any other property claimed by purchase from the said I. A. Paschal.

Answer to interrogatory fifteenth. Until after the commence-
184 ment of this suit, I never knew the particulars of the sale of any of my real estate in San Antonio, to whom sold, or for how much. I had heard indirectly that a sale had been made. I always supposed the sale was fraudulent, and have always said that some time I would get back at least my real estate. When I left San Antonio, I had a just claim against the gas company of many thousand dollars for services rendered after the completion of the works and for material purchased for manufacturing the gas; sufficient to have paid up all the assessments claimed to have been paid by said I. A. Paschal. I also had in the hands of W. A. Bennett, in cash and assets which I called cash, more than enough to have paid all such assessments.

ISAAC L. LYON.

Subscribed and sworn to before me this 2d day of January, 1874, at my office, in the city of Detroit, State of Michigan.

C. E. WARNER,
Notary Public, Wayne County, Mich.

185 Interrogatories to be administered for the cross-examination of the before-named defendant, Isaac L. Lyon, to be produced, sworn, and examined on the part of the said defendant in a certain cause now depending and at issue in the circuit court of the United States for the western district of Texas, wherein Jesus Hernandez and Katharine Hernandez are complainants, and the said Isaac L. Lyon is defendant.

Answer to cross-interrogatory 1. I did, on the 24th day of August, 1865, write & forward to Judge I. A. Paschal the letter, a copy of which is attached to the direct interrogatories, and I have been aware of the contents of said letter since that time. The original of said letter I believe was wholly written and signed by me, and I believe I forwarded the same from Monterey to said I. A. Paschal, and I did intend to give him all the authority that I believe said letter contains in and about my business and interests in San Antonio.

Answer to cross-int. 2. On the 22nd day of May, 1851, I did make and execute a power of attorney to W. A. Bennett, of San Antonio, a copy of which is attached to my answer to the bill referred to above,
186 and I believe said Bennett, under said power of attorney, did act as my agent or attorney in fact. I cannot state that my letter to Judge Paschal, on the 24th of Aug't, 1865, was written in consequence of a letter to me from said W. A. Bennett, dated San Antonio, July 12, 1865. My impression now is that my letter was in reply to a letter from Judge Paschal to me informing me that said W. A. Bennett had turned over my papers to him for safe-keeping, but I also received a letter from said W. A. Bennett, written more in detail, informing me that

he would turn over my papers and stock to Judge Paschal. I do not believe said Bennett informed me in his letter that said Paschal (I. A. Paschal) would act as my attorney in the sense in which he, Bennett, had acted with a power of attorney from me. I knew that said Bennett had no authority in his power of attorney to constitute or appoint another person my attorney, and I never would have consented to allow I. A. Paschal to act in that capacity.

Answer to cross-int. 3. I did at the time I left San Antonio own stock in the San Antonio Gas Company. I owned 600 shares, and had paid up at least half of the amount of said stock.

187 Answer to cross-interrog. 4. I do not think that W. A. Bennett in his letter above mentioned, dated July 12, 1865, informed me that a call of 2½ per cent. on the gas-stock had been made for the purpose of keeping the works in repair, and that the assessment on my stock amounted to fifteen hundred dollars. I made no further provision for the payment of any assessments that might be made upon my stock than by leaving a large amount of property, notes, bonds, morgages, goods, a herd of mules, and real estate in said W. A. Bennett's hands, from the proceeds of which I expected to realize many thousand dollars; but said Bennett remitted to me after the war either $1,500 or $2,000, which is all that I ever received from the large amount of property I left behind when forced to leave the country.

Answer to cross-inter. 5. I cannot remember whether or what I might have written to said W. A. Bennett about the third of October, 1866. I think without a doubt that I did write to said Bennett inquiring about Judge Paschal's silence, for I do not remember ever receiving a letter or line from him after August, 1865, although I wrote to him

188 frequently. But I do not believe I ever wrote to said Bennett, asking him whether said Paschal had sold my real estate or gas-stock, unless because I had heard he had sold, and, knowing he had no authority from me to sell, I might have asked W. A. Bennett for information. I do not remember receiving any reply from said W. A. Bennett to any of my letters of inquiry. I know I never received from him or any one else any information in regard to the sale of my gas-stock or real estate.

Answer to cross-inter'og. 6. I never received a letter or line from Judge J. A. Paschal to the best of my knowledge & belief after August, 1865. I never received a statement through M'r Gar. W. Brackenridge from J. A. Paschal, and have no recollection of receiving such a letter from W. A. Bennett as is referred to in the above cross-inter'og. 6.

Answer to cross-inter'og. 7. I have no recollection of writing said W. A. Bennett on the second of January, 1867, but do remember that I frequently wrote to him asking for information about my unsettled affairs in San Antonio. Have no recollection of receiving such a letter from W. A. Bennett as is referred to in cross-inter'og. 7.

189 Answer to cross-inter'og. 8. Judge J. A. Paschal may at various times have written to me after August, 1865, but I have no recollection of ever receiving such letters. I have never received such statement as is mentioned in cross-inter'og. 8 from W. A. Bennett or J. A. Paschal. I never received any statement.

Answer to cross-inter'og. 9. I may have had a conversation with John Fries in reference to the lot in question, but never told him nor any one else that if a purchaser could be found I would leave everything in the hands of Judge Paschal, or words to that effect; and I never, in any conversation with said Fries, pointed out Judge Paschal as my agent or attorney to sell any of my property. I can and do state positively on

this subject, because I never regarded Judge Paschal as my agent having power to convey title of my property.

Answer to cross 10. No; I did not know that my title-deeds were in the hands of Judge Paschal when I wrote to him in August, 1865; but if they were, that would not give him authority to transfer any titles.

Answer to cross-inter'og. 11. I did think it would be unsafe for me to return to San Antonio immediately after the war. I was told
190 that Union men had suffered even death, and our newspapers were continually publishing instances where Union men were persecuted and driven out of the State. But I was told by Confederate soldiers that if I ever returned to San Antonio I would be hung.

Answer to cross-inter'og. 12. I first learned of the sale of the lot in controversy, save by hearsay, from a letter written to me since this suit was commenced, in which there was a full statement of the sale of my property, and that it was claimed that the proceeds of the sale were paid in part or the whole on the assessments made on my gas-stock. I had been told that this was the case before by persons whom I met casually from San Antonio, but never received any notice from any one who seemed to know, and until I received the above-mentioned letter from a R. H. Peck, of Austin, I did not know anything definite as to what property had been sold, or for how much. A M'r Brackinridge, from San Antonio, called upon me in New York City, and he told me that assessments had been made upon my gas-stock, and that M'r J. A. Paschal had pledged my stock for money loaned to said Paschal
191 by said Brackinridge.

Answer to cross-inter'og. 13. I never paid taxes upon the lot in controversy since the year 1866, and I never knew who did pay the taxes thereon; and I never requested any one or authorized any one to pay taxes on said lot. I knew that no one but the city, county, or State could complain if the taxes were not paid.

Answer to cross-interrogatory 14. I first learned from a letter received by me from R. H. Peck, Austin, written since this suit was commenced, that the complainants in this cause were in possession of the lot in controversy. Said R. H. Peck's letter was in very general terms. My principal source of information was from complainant's bill of complaint, from which I first learned that he had taken possession of said lot, and the amount of improvements he had put upon the same. Before the suit was commenced I did not know who claimed to own the lot beside myself, and did not know that one dollar improvement had been put upon said lot.

Answer to cross-inter'og'y 15. I first learned from R. H. Peck's letter, written since this suit was commenced, that complainants claimed
192 possession of this lot. But said Peck did not give me any details, did not tell me anything of the value of said lot, nor of any improvements put upon it. All my knowledge of value, and of improvements, and of taxes, I first learned from complainants' bill.

Answer to cross-interrog'y 16. From my knowledge of the laws of the States in reference to taxes, I was aware that taxes were levied upon real estate for State, county, and city purposes, but I never received any special notice; and I never knew that taxes were paid on any of my property in Texas before this suit was commenced. I never did make any inquiry since the year 1865, of any tax-collector of Bexar County, or of the city of San Antonio, as to the amount of taxes assessed upon my property, and due upon the same.

Answer to cross-interrog. 17. W. A. Bennett was my agent. I gave him a full power of attorney in the year 1861, a copy of which I attach

as a part of my answers to this cross-interrog. After Bennett refused to act as my agent, the said J. A. Paschal was my agent for the safe-keeping of my papers, and making any and all necessary inquiries
193 concerning my property and interests in Texas. I do not know that I can make plainer the meaning of my letter to him, dated August 24, 1865. I learned that he had my papers for safe-keeping. I was perfectly satisfied that he should have them if W. A. Bennett could not keep them. I did not know any one who would take them. If I had been asked by W. A. Bennett, under the circumstances, whether he should give my papers into the possession of said Paschal, I think I should have consented. I had confidence in Mr. J. A. Paschal as a shrewd lawyer, well posted, very familiar with business negotiations, well acquainted with every one in and around San Antonio. He could readily communicate with me if he so desired. I never gave a full power of attorney to any person except W. A. Bennett to act for me in San Antonio or elsewhere. I had the utmost confidence in said Bennett; but I would not have given him such a complete power of attorney but from the necessity of the case; I was compelled to do it; my life was threatened; I had to flee the country without any chance
194 to make any arrangement to protect my property. I did not know whether I could get out of the country alive. I did what I would not have done under any other circumstances. When Bennett wrote to me that had turned over my papers to Judge J. A. Paschal for safe-keeping, I knew that he had no power or authority to transfer his power and authority to another person without my consent; and I did for a moment regard J. A. Paschal as my agent in the same sense in which W. A. Bennett had been my agent. If I had regarded said Paschal as having such power conferred upon him as my power of attorney gave said Bennett, surely my letter does not show it. I expressly said in that letter that my papers were in his hands for safe-keeping. That was what I wanted him to do—keep my documents safe until some future time, when I could claim them again. I also wanted him to look after my property, the same as any such authorized agent could and would without having any power to sell and transfer property, give title, and receive payment therefor. I had no agent in
195 San Antonio after August 24, 1865, who was authorized to act for me the same as W. A. Bennett, according to his power of attorney; but I considered J. A. Paschal was my agent to do just so far as he had power to do according to my let[illegible] of August 24, 1865, to wit, keep my papers safe; make all inquiry he could about my property, and write to me.

Answer to cross-interrog. 18. After the war had closed, and before, I was anxious to dispose of my property in San Antonio; I thought I. A. Paschal would be likely to see parties, Union men, who would be likely to buy. I knew that I had frequently under similar circumstances employed parties to look for buyers, and, having found such, to write to me. I have such agents elsewhere now. They have no power of attorney to transfer titles, but can negotiate sales through me. This is a common practice. It was my intention to go to San Antonio after the war closed. I could have easily executed all needed papers. I was prevented from going by information I received through various sources of the unsettled and dangerous condition of the country. After-
196 wards I was so much occupied that I could not go.

Answer to cross-interrogatory 19. My letter to I. A. Paschal was written with no other intention than to acknowledge the receipt of the information that he had my papers in his possession for safe-keep-

ing. I had heard that he was and had been a Union man throughout the war. I could but express my satisfaction at his course, and compliment him highly. I thought then, and still think, that he deserved it. I believe he was honestly a Union man—a true, honest patriot. I thought he was wise enough to see the end to be disastrous to traitors; and I had confidence that he could and would do all that I required, just as well as any other man. If I had wanted him to sell my property and receive payment therefor, I should most certainly have given him such instructions. I certainly should have expressed some interest and opinion. And if I had wanted him to sacrifice my property to pay assessments made by the gas company on my stock, I certainly
197 should have said so in my letter. Nothing was further from my true purpose. On the contrary, I did write just what I meant, and meant just what I wrote.

ISAAC L. LYON.

Subscribed & sworn to before me this 2d day of January, A. D. 1874, at my office at the city of Detroit, State of Michigan.

C. E. WARNER,
Notary Public, Wayne Co., Mich.

In witness whereof I have hereunto set my hand and official seal.
Detroit, January 2d, 1874.
[L. S.]

C. E. WARNER,
Notary Public, Wayne Co., Mich.

STATE OF MICHIGAN,
County of Wayne, ss:

I, Ray Haddock, clerk of said county, and clerk of the circuit court for the county of Wayne, which is a court of record, having a seal, do hereby cert'y that C. E. Warner, whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument, and therein written, was, at the time of taking such proof or ac-
198 knowledgement, a notary public in and for said county, duly commissioned and qualified, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to the said certificate or proof of acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, at Detroit, this third day of January, A. D. 1874.

RAY HADDOCK, *Clerk*,
By W. Y. CLARK, *D. C.*

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that I, Isaac L. Lyon, of the said county of Bexar & State of Texas, have made, constituted, and appointed, and do by these presents make, constitute, and appoint, W. A. Bennett, of the county and State aforesaid, my true and lawful attorney in fact, to take charge of, possess, and control all my property and estate
199 of every sort, real, personal, and mixed, choses in action, and assets, and for me and in my name to hold and control, or sell, transfer, and convey the same to whomsoever and for what consideration soever, and upon whatever terms and manner he may deem fit and best for my interest, hereby authorizing my said attorney to collect and

receipt for all debts, rents, and profits, due or to become due to me, also to sell and convey, by good and sufficient deeds in fee-simple, any and *and* all real estate I may and do own in the county aforesaid; also to collect the dividends and vote in my stead and in all respects represent me in my gas-light stock in the city of San Antonio, all matters pertaining to the management of the same, and to sell said stock, and transfer the same upon the books of the company as required by their charter and by-laws, and to do and perform all the aforesaid acts and things, and to do all manner of acts and things touching my estate aforesaid, that I could do in person; and I hereby ratify and confirm, and hold myself at all times bound to ratify and confirm, all the acts and doings of my said attorney to be done and performed in
200 the premises aforesaid, as fully and perfectly and to all intents and purposes as if done by me in my profession.

In testimony whereof I have hereunto subscribed my name this 22nd day of May, 1861.

I. L. LYONS.

In presence of—
W'M P. M. MEANES.
W'M GROESBECK.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, Henry M. Smyth, to me well known, who, being by me duly sworn, says that W'm P. M. Meanes and W'm Groesbeck, whose names are signed as witnesses to a power of attorney, given 22nd May, 1861, by I. L. Lyon to W. A. Bennett and hereto attached, reside out of the State of Texas.

H. M. SMYTH.

Sworn to and subscribed before me this 18th day of March, A. D. 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, John C. French and E. A. Florian, to me well known, who, being by me duly sworn, depose and say that they are disinterested witnesses in the matter of the power of attorney given 22nd
201 May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached; that they are well acquainted with the handwriting of I. L. Lyon, who executed the said instrument, and of W'm Groesbeck, one of the witnesses to the same, and recognize the names thereto signed to be the genuine signatures of the said I. L. Lyon and W'm Gr[illegible]

JOHN C. FRE
E. A. FLORIA

Sworn to and subscribed before me this 18th day of March, A. D 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

I, Peyton Smythe, county clerk of said county, do hereby certify that the foregoing instrument of writing, with its certificate of authentication,

ing. I had heard that he was and had been a Union man throughout the war. I could but express my satisfaction at his course, and compliment him highly. I thought then, and still think, that he deserved it. I believe he was honestly a Union man—a true, honest patriot. I thought he was wise enough to see the end to be disastrous to traitors; and I had confidence that he could and would do all that I required, just as well as any other man. If I had wanted him to sell my property and receive payment therefor, I should most certainly have given him such instructions. I certainly should have expressed some interest and opinion. And if I had wanted him to sacrifice my property to pay assessments made by the gas company on my stock, I certainly
197 should have said so in my letter. Nothing was further from my true purpose. On the contrary, I did write just what I meant, and meant just what I wrote.

ISAAC L. LYON.

Subscribed & sworn to before me this 2d day of January, A. D. 1874, at my office at the city of Detroit, State of Michigan.

C. E. WARNER,
Notary Public, Wayne Co., Mich.

In witness whereof I have hereunto set my hand and official seal.
Detroit, January 2d, 1874.
[L. S.]

C. E. WARNER,
Notary Public, Wayne Co., Mich.

STATE OF MICHIGAN,
County of Wayne, ss:

I, Ray Haddock, clerk of said county, and clerk of the circuit court for the county of Wayne, which is a court of record, having a seal, do hereby cert'y that C. E Warner, whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument, and therein written, was, at the time of taking such proof or ac-
198 knowledgement, a notary public in and for said county, duly commissioned and qualified, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to the said certificate or proof of acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, at Detroit, this third day of January, A. D. 1874.

RAY HADDOCK, *Clerk*,
By W. Y. CLARK, *D. C.*

THE STATE OF TEXAS,
County of Bexar:

Know all men by these presents that I, Isaac L. Lyon, of the said county of Bexar & State of Texas, have made, constituted, and appointed, and do by these presents make, constitute, and appoint, W. A. Bennett, of the county and State aforesaid, my true and lawful attorney in fact, to take charge of, possess, and control all my property and estate
199 of every sort, real, personal, and mixed, choses in action, and assets, and for me and in my name to hold and control, or sell, transfer, and convey the same to whomsoever and for what consideration soever, and upon whatever terms and manner he may deem fit and best for my interest, hereby authorizing my said attorney to collect and

receipt for all debts, rents, and profits, due or to become due to me, also to sell and convey, by good and sufficient deeds in fee-simple, any and *and* all real estate I may and do own in the county aforesaid; also to collect the dividends and vote in my stead and in all respects represent me in my gas-light stock in the city of San Antonio, all matters pertaining to the management of the same, and to sell said stock, and transfer the same upon the books of the company as required by their charter and by-laws, and to do and perform all the aforesaid acts and things, and to do all manner of acts and things touching my estate aforesaid, that I could do in person; and I hereby ratify and confirm, and hold myself at all times bound to ratify and confirm, all the acts and doings of my said attorney to be done and performed in
200 the premises aforesaid, as fully and perfectly and to all intents and purposes as if done by me in my profession.

In testimony whereof I have hereunto subscribed my name this 22nd day of May, 1861.

I. L. LYONS.

In presence of—
W'M P. M. MEANES.
W'M GROESBECK.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, Henry M. Smyth, to me well known, who, being by me duly sworn, says that W'm P. M. Meanes and W'm Groesbeck, whose names are signed as witnesses to a power of attorney, given 22nd May, 1861, by I. L. Lyon to W. A. Bennett and hereto attached, reside out of the State of Texas.

H. M. SMYTH.

Sworn to and subscribed before me this 18th day of March, A. D. 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, Edward Miles, a notary public in and for said county, John C. French and E. A. Florian, to me well known, who, being by me duly sworn, depose and say that they are disinterested witnesses in the matter of the power of attorney given 22nd
201 May, 1861, by I. L. Lyon to W. A. Bennett, and hereto attached; that they are well acquainted with the handwriting of I. L. Lyon, who executed the said instrument, and of W'm Groesbeck, one of the witnesses to the same, and recognize the names thereto signed to be the genuine signatures of the said I. L. Lyon and W'm Gr[illegible]

JOHN C. FRE
E. A. FLORIA

Sworn to and subscribed before me this 18th day of March, A. D 1867.

[L. S.] EDWARD MILES,
Notary Public, B. C.

THE STATE OF TEXAS,
County of Bexar:

I, Peyton Smythe, county clerk of said county, do hereby certify that the foregoing instrument of writing, with its certificate of authentication,

was filed for registration in my office the 21st day of March, 1867, at 5 o'clock p. m., and duly recorded the 22nd day of March, 1867, at 10 o'clock a. m., in the records of said county, in book U, No. 2, on page No. 106 & 107.

Witness my official seal and signature, at office in San Antonio, the day and year last above written.

[L. S.] PEYTON SMYTHE,
C. C., B. Co.

THE STATE OF TEXAS,
County of Bexar:

202 I, Mortimer Slocum, clerk of the district court of said county, do hereby certify that the above and foregoing is a true and correct transcript of the original as recorded among the records of said county, in book U, No. 2, on page No. 106 & 107.

Witness my official seal and signature at office in San Antonio this 17th day of July, A. D. 1873.

[L. S.] M. SLOCUM,
Clk D. C., B. Co.,
By THEO. BALDUS,
Deputy.

203 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing two hundred and two written and printed pages contain a full and true transcript of the record of all the proceeding had in this court in case No. 70, chancery, entitled Jesus and Katharine Hernandez vs. Isaac L. Lyon, as they appear of file and record.

In testimony whereof I have hereunto set my hand and the impress of the seal of said court, at Austin, the 16th day of October, A. D. 1875.

M. HOPKINS, *Clerk.*

(Indorsement on cover:) No. 307. Isaac L. Lyon, appellant, vs. Jesus Hernandez & Katharine Hernandez W. Texas, C. C. U. S. Filed 9th November, 1875.

Supreme Court of the United States.

ISAAC S. LYON
vs.
JESUS HERNANDEZ.

No. 49.

Brief for Appellant.

P. PHILLIPS,
W. HALLETT PHILLIPS,
Sol'rs for Lyon.

OCT. 20, 1878.

R. O. Polkinhorn, Printer,

Supreme Court of the United States.

ISAAC S. LYON
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No. 49.

Brief for Appellant.

At the June Term, 1873, Lyon recovered a judgment in the circuit court, U. S., in an action of ejectment against Hernandez, for a certain lot situated in San Antonio, Texas.

Thereupon Hernandez filed his bill on the equity side of the same court to restrain Lyon from executing his writ of possession on such judgment, and to compel him to convey the legal title; or if such relief could not be granted to have the value of improvements made on the land declared a lien thereon.

He states, as ground for the bill, that the judgment obtained by Lyon was upon the trial of the legal title alone, and that his rights as set forth are of an equitable nature, constituting an equitable title to the land.

The bill avers that Lyon, being the owner of the lot,

on the 24 August, 1865, in writing, authorized J. A. Paschal to sell all the real estate he was possessed of in the county of Bexar, Texas.

In pursuance of this authority, Paschal, on 24 April, 1866, sold to him the lot in controversy, he paying to Paschal $700 as the purchase money, who thereupon made to ~~him~~ a deed under which he went into possession, and that he paid the taxes up to time of suit; all of which he believes and charges with the consent of Lyon.

complainant

The bill further states that Paschal, with the consent of Lyon, applied the purchase money to paying an assessment on stock of the San Antonio Gas Co., owned by Lyon, which assessment was made in April, 1863.

It charges that after the sale Paschal was treated and represented by Lyon as his duly authorized agent to make sale of the lot; that ~~he~~, Lyon, ceased to regard it as his property and acquiesced in the sale.

The bill then suggests that complainant has had peaceable adverse possession of the land in good faith for more than one year next before the institution of the ejectment suit and made valuable improvements thereon

The prayer is that Lyon be restrained from executing his writ of possession, and that he should be decreed to convey the land in fee simple to complainant; or if this relief cannot be granted, he should be allowed his improvements in accordance with the statute of Texas, and in that case the amount paid by him to Paschal be declared a lien upon the land. Rec. 2 to 6.

Appended to the bill is the letter written by Paschal referred to as authorizing the sale. It is dated Monterey, Aug. 24, 1865, and addressed to Paschal, and is as follows:

"My D'r Sir: I am just in receipt of a letter from M'r Bennett, informing me that he has placed all my

papers for safe keeping in your possession. In better or safer hands he could not have given them. The position you have acquired during the past four years of the war is a very enviable one, as glorious as it has been dangerous. I congratulate you upon the issue. I am sure you have no reason to regret your decision to abide by the Union. I trust you shall be rewarded in proportion as traitors shall be cursed. We have a herd of Texas traitors in Mexico at the present time. I can only say but little. I am unable to go to San Antonio at present. My family are sick in the North & demand my presence there. M'r's Kinney's death leaves a large business in my hands to be settled. I wish you to manage as you would wish your own. If an opportunity offers to sell everything I have, would be glad to sell. It may be parties will come into San Antonio who will be glad to purchase my gas-stock and real estate. I shall be glad, if you find time to write to me, if you will, give me a description of afiairs as they exist at present. I shall probably remain here 2 months yet. I notice you have a note of M'r Fonda's belonging to M. C. She left some stock in the hands of his adopted son. Can you not find out what has become of it, & if possible get hold of tt as security? Can you tell me whether I can collect notes that have been paid by parties in Confed. paper to N. O. Green? I do not see how the payment under such circumstances can release them any more than payment to N. O. Green of the am't of Northern indebtedness can release a merchant from obligation to pay his Northern creditor. I enclose a letter for my wife. It is impossible to send letters by Matamoras. The road has been blockaded for a long time. If you have a regular mail I shall be greatly obliged if you will mail this letter; if no mail will you do me the favor to send by private hands to New Orleans?

Most resp'y yours,

J. L. Lyons."

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The answer of Lyons denies he ever authorized or intended to authorize Paschal to convey the land, nor was he ever possessed of any authority except to take care of his papers and collect or secure some doubtful debts. Prior to the 1 August, 1865, W. A. Bennett was his authorized attorney, but that his power of attorney did not contain any power of substitution.

He denies that at any time he regarded or recognized Paschal as his attorney further than to preserve his papers, and in case he found any party who wished to purchase his property to inform the defendant. That Paschal was deeply involved in debt and a very careless business man, and he never would have been willing to entrust him with a power of attorney to convey real estate and receive the purchase money.

He denies, most positively, that he had ever ceased to regard the lot as his own property, or has ever acquiesced in the pretended sale; that, on the contrary, upon all occasions when the same was referred to he had denied the claim of complainant, and was only prevented from taking actual possession for fear of bodily harm. The cause of which he thus explains:

Upon the breaking out of the civil war he was a Union man, and receiving information that a secret society was going to have him hung, he was compelled to flee and leave the country in a secret manner to save his life. After the war, in 1866, he believed, and was so advised, that he would suffer imminent danger should he then return to San Antonio.

He avers his ignorance as to who had paid the taxes, or of the taking possession by complainant and making improvements, and that if it were true, complainant did so without his knowledge or consent, and with full knowledge of his title, wherefore he was not chargeable with the value of the improvements.

As to the payment to Paschal he avers that if he *re-*

ceived or appropriated the money to the payment of an alleged debt, it was wholly unauthorized, and without his knowledge or consent; he states reasons showing he was not liable for the assessment of which he had no notice, as he was adhering to the Union side and living beyond the Confederate States at the time; and further that the company was largely indebted to him.

He then denies the allegation that at any time subsequent he had acquiesced in Paschal's receiving or appropriating the money.

As to the improvements, he denies that the complainant was a possessor in good faith, because the alleged letter of attorney exhibited on its face the want of authority of Paschal to sell even an equitable title or right.

He alleges the institution of the ejectment and recovery of judgment, and avers that it fully settled all questions as to the property and the suit.

The decree of the court, from which this appeal is taken, was that Lyon should convey the legal title to Hernandez. p. 19.

Assignment of Error.

1. The court erred in decreeing that Lyon should convey the premises to Hernandez.

2. In not dismissing the bill.

Much testimony was taken by complainant, but almost all confined to the question of improvements.

His principal ~~and only~~ witness to sustain the other allegations of the bill is Bennett, who was examined in order to show that Lyon had knowledge of and approved the sale made by Paschal.

In answer to interrogatories on the part of complainant, he testifies that he acted as the agent for Lyon until 1865, when he left San Antonio, turning over all the papers and business of Lyon to Paschal, of which he advised the former, who approved of his action by letter. "This was in the summer of 1865; after that Lyon corresponded with Paschal, and treated and regarded Paschal as his agent. I know this from the letters of Lyon to me."

He also gives an extract from a letter written by him to Lyon and dated April 14, 1867, in which he states: "In yours of Jan'y 1, 1867, you mention that none of my letters had come to hand. I answered soon after receipt of the same; also saw Judge Paschal, and he wrote you fully on the subject of gas stock and real estate. He is anxiously expecting to hear from you on the subject; will call on him to-morrow and give him your address, and have him write you on the subject again. I assist Paschal in regard to your business, and hope his acts will be satisfactory to you under the circumstances."

Bennett fully corroborates the statements of the reasons for and circumstances under which Lyon left San Antonio.

Rec., p. 44 to 45.

It is hardly necessary to call the attention of the court to the general remark of Bennett, that after 1865 Lyon corresponded with Paschal, and treated and regarded him as his agent. Lyon does not deny that he wrote Paschal after that date, but he explicitly states he never received any reply to his numerous letters.

That Lyon treated Paschal as his agent, for the purposes mentioned in his letter, may be granted; but the record is silent as to any evidence showing he treated him as his agent authorized to sell, nor does Bennett so state.

The letter written by Bennett, from a copy of which he gives an extract, is entirely favorable to the defendant. It notes the fact that Lyon writes "none of Bennett's letters had come to hand." He states that he would give Paschal the address of Lyon, and that Paschal was anxiously expecting to hear from Lyon on the subject of gas stock and real estate.

It is but an ordinary presumption that as Bennett's letters did not reach Lyon, neither did those of Paschal. There is no proof that *Bennett's* letter of April 14, '67, reached Lyon, and the latter states he has no recollection of ever receiving it, and that no statement was ever sent him by Paschal or Bennett.

The testimony of Lyon fully bears out his answer. He escaped from Texas May 22, 1861, leaving in the hands of Bennett a power of attorney and personal property to a large amount. He supposed that Bennett would protect his property from confiscation. He went to Monterey, Mexico, where he learned that his property was confiscated. He resided from 1861 to 1865 in Mexico, in which year he removed to New York and remained there until 1867, when he removed to Michigan, where he has since resided. He knew nothing of the sale made to Hernandez until bringing of suit, but in 1867 first learned that Paschal had sold some of his real estate in San Antonio, but he received none of the particulars of sale, to whom sold or for how much; that when he left San Antonio he had a just claim against the gas company of many thousand dollars for services rendered after the completion of the works, and for materials purchased for manufacturing the gas, sufficient to have paid up all the assessments claimed to have been paid by Paschal. He testifies also that he had in the hands of Bennett, in cash and assetts, more than enough to have paid the assessments.

The rest of his testimony is taken up with specific de-

nials of the allegations of the bill showing any intention to authorize Paschal to sell the land, or any acquiescense or ratification.

In response to the cross-interrogatories he states he knew Bennett had no authority in his power of attorney to substitute another person, and that he never would have consented to allow Paschal to act in that capacity. He says that he wrote Bennett inquiring about Paschal's silence, for he did not remember ever receiving a letter from him after August, 1865, though he wrote to him frequently. Has no recollection of receiving the letter from Bennett referred to by him. He never received any statement from Bennett or Paschal. He first learned that complainant was in possession of the lot from a letter received since the suit was commenced.

In answer to the question what he meant by the letter to Paschal, he again says, "I considered Paschal was my agent to do just so far as he had power to do according to my letter, to wit: keep my papers safe; make all inquiry he could about my property, and write to me.

"After the war had closed, and before, I was anxious to dispose of my property in San Antonio. I thought Paschal would be likely to see parties who would be likely to buy. I knew that I had frequently, under similar circumstances, employed parties to look for buyers, and having found such, to write to me. I have such agents elsewhere now. They have no power to transfer title, but can negotiate sales through me." P. 67 to 75.

We have been thus particular in stating the pleadings and testimony, because the principles of law governing the case seem to be clear.

The power of equity to restrain a judgment at law is an extraordinary one and will not be exercised except in favor of a party showing grounds of which he could not

have availed himself at law, or was prevented from doing so by fraud or accident, unmixed with negligence or fault on his part.

Crim vs. *Handly*, 94 U. S.. 652.
Brown vs. *Swann*, 10 Pet., 506.

Since the administration of the common law has become more liberal, courts of equity but rarely exercise the power. Morever, under the jurisprudence of Texas, equitable defenses can be set up to prevent a recovery in an action of trespass to try title. 2 Pasch. Dig. Decis., 898.

The rule precluding a man from claiming what is conceded to be his own, is in a high degree penal, and ought not to be enforced if justice can be obtained without a forfeiture.

The theory of the bill is that in equity and conscience the land belongs to Hernandez, and therefore Lyon should not be permitted to enforce his legal title, but that it should be surrendered to Hernandez.

The question of construction of the letter of Lyon to Paschal is determined by the result of the action at law brought by Lyon against Hernandez. The judgment settles that Paschal had no legal authority to sell.

It is too late after this determination for Hernandez to seek another forum and have the question redetermined; he cannot take his chances of succeeding in his defense at law and secure another chance, if unsuccessful, by coming into equity.

Brown vs. *Swann*, 10 Pet., 506.
Duncan vs. *Lyon*, 3 Johns. Chan., 356.

The case rests mainly upon two grounds which are asserted to be of an equitable nature, and sufficient to prevent Lyon from deriving the fruits of his judgment.

As to the first that Lyon represented Paschal to be his agent to sell, it may be disposed of by the express

denial of Lyon, and by the fact that there is not a word of evidence in the record to support the charge.

The second is that Lyon knowingly acquiesced in and ratified the sale. This is attempted to be shown in three ways. By receiving the benefit of the purchase money; by abandoning all assertion of claim to the land; and by remaining silent until time of bringing suit.

The ratification, attempted to be shown, is what the civilians call a *tacit ratification.*

To bind the owner it must be made with a full knowledge of all the material facts.

Owing vs. *Hull*, 9 Pet., 629.

Tested by this clear principle, the action of Paschal in receiving the purchase money and the manner of its appropriation, are ineffectual to show a ratification on the part of Lyon. Such action was wholly unauthorized by Lyon, and, as his testimony shows, never acquiesced in.

His objections to the validity of the assessments, and his means of meeting them, if valid, have been before stated and need not here be repeated.

It devolved upon complainant to show a clear case of ratification.

Deering vs. *Lightfoot*, 16 Ala., 35.

The allegation that after the sale Lyon abandoned all claim to the land is as naked of proof as that charging Lyon with representing Paschal to be his agent. The testimony of Lyon, contradictory of this, is full. His action and recovery of judgment is to the same point, and the explanation he gives of the reasons why he did not assert his rights immediately after termination of hostilities is cogent and sufficient.

His temporary silence would have been permissible and justifiable even if he had knowledge, which he denies.

The title claimed by Hernandez was one of which he had full notice. He took with full knowledge of the

want of authority in Paschal to sell; he was not mislead by silence, and does not occupy the position of a *bona fide* purchaser.

Railroad Co., vs. *Dubois*, 12 Wall., 64.

A man is said to be a *bona fide* purchaser where he possesses in ignorance of all the facts relating to his adversary's title.

Dormer vs. *Fortesque*, 3 Atk., 134.

But, as we have seen, this is not a case of a man lying by and seeing another purchase and making no objection. Lyon was not in San Antonio at the time, was ignorant of the transaction and never deceived Hernandez by his inaction to hazard his money. Silence will not forfeit a right where silence is not a fraud.

This brings us to the last ground urged why equity should interfere..

It is suggested that Hernandez went into possession of the land and made improvements with the knowledge and consent of Lyon.

This is alleged first as showing that Lyon was endeavoring to take advantage of his own wrong.

The answer is, the testimony shows that Lyon was wholly unaware of the improvements being made. Here there can arise no estoppel.

Independent of this, on the facts of the case, an estoppel cannot arise.

Says STRONG, Justice: "If the truth be known to both parties, or they have equal means of knowledge, there can be no estoppel."

Hill vs. *Epley*, 7 Casey, 331;
Rennie vs. *Young*. 2 DeG & J 136.

An estoppel in *pais* is a moral question.

There must be some degree of turpitude in conduct which has misled others to their injury.

Conduct founded merely upon ignorance of one's rights has no such ingredient.

Henshaw vs. *Bissell*, 18 Wall., 271.

For the enforcement of an estoppel of this character with respect to the title of property, such as will prevent a party from asserting his legal rights, the effect of which will be to transfer the enjoyment of the property to another, the endeavor to deceive or mislead, or negligence so gross as to be culpable, should be clearly established.

It is also essential that the party claiming to have been influenced was not only destitute of knowledge of the true state of the title, but also of any available means of acquiring such knowledge.

Brant vs. *Virginia C. & I. Co.*, 93 U. S., 336.

Failing to found any argument in favor of the jurisdiction of equity on the ground of estoppel, the complainant asks if the court will not decree the conveyance of the land, he should be allowed the value of the improvements as a *bona fide* possessor, in accordance with the provisions of the Texas statute.

This right was fully secured to him, under that statute, on the trial of the action of ejectment. It provides that a defendant in any such action may, before the trial of the case, suggest that in good faith he has had adverse possession of the same for a period of one year next preceding the action, and that he has made valuable improvements. Thereupon the jury is to try the fact alleged of good faith and the making of the improvements. If they find in the negative, in case of a recovery in ejectment, a writ of possession shall issue as usual;

if in the affirmative, they shall assess the value of the improvements, and also the value of the land and of the use and occupation.

If the improvements exceed the value of the use and occupation, no writ of possession is to issue for a year, unless the plaintiff pays their value in excess. If he fails to pay within the year then the defendant may by paying within the six months succeeding, the value of the land, bar the plaintiff of his writ of possession.

If the defendant does not within the six months take advantage of this right, the defendant may sue out his execution.

1 Paschal, Dig. Art. 5300.

For the convenience of the court this section is given in full as an appendix.

The point we here make is that the statute gives to the defendant in the ejectment a full and complete remedy. If he neglects to take advantage of this there is no jurisdiction in equity to rescue him from his negligence.

An equally fatal objection strikes at the foundation of his right. As before shown by the general principles of equity, he does not come under the designation of a *bona fide* purchaser.

The construction which the supreme court of Texas has given to this statute and which is binding on the courts of the United States, shows Hernandez is not a possessor in good faith within the meaning of the statute.

One who purchases from a person acting as an agent but who had not the power to sell, must look to the authority of the agent, and if he knew or might have known the want of power, he is not a possessor in good faith.

Robson vs. *Osborn*, 13 Tex., 307.
Rogers vs. *Bracken*, 15 Tex., 568.
Saunders vs. *Wilson*, 19 Tex., 198.

We say in conclusion, that Hernandez has wholly

failed to show a case for the interposition of equity, and it is somewhat remarkable that the Judge below, on the pleadings and evidence in the record should have decreed Lyon to convey the legal title to Hernandez and be perpetually enjoined from asserting his legal rights under his judgment.

We ask the decree below may be reversed with directions to dismiss the bill.

P. PHILLIPS,
W. HALLETT PHILLIPS,
Sol'rs for Lyon.

Oct. 20 1878.

APPENDIX.

Improvement Statute of Texas.

ART. 5,300. "In any action of trespass to try title, it shall be lawful for the defendant at any time before the trial of said suit, to suggest to the court, that he and those whose estate he has in the lands and tenements sued for, have had adverse possession of the same in good faith, for at least one year next before the commencement of said suit; and that he and those whose estate he has, have made permanent and valuable improvements on the lands sued for, during the time he or they have had possession of the same; and the jury trying the suit, if they should find for the plaintiff, shall at the same time inquire if the suggestion so made be true or false—if false, they will return a verdict as in ordinary cases for the damages sustained, but if true, they shall assess the value of the improvements at time of the suit, which have been made by the defendant, or by those whose estate he has, and shall assess the value of the lands or tenements without considering the increased value thereot by reason of such improvements as shall have been made by such defendant or by those whose estate he has, and they shall also assess the value of the use and occupation of the said lands; and if the value of the use and occupation as assessed, shall exceed the value of the improvements as assessed, the court shall render judgment against the defendants for the excess.

ART. 5,301. In any suit where the value of the improvements so assessed shall exceed the value of the use and occupation, no writ of possession shall be issued for

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ART. 5,301. In any suit where the value of the improvements so assessed shall exceed the value of the use and occupation, no writ of possession shall be issued for

the term of one year after the rendition of the judgment, unless the plaintiff or his legal representatives shall pay to the clerk of the court, for the defendant the excess of the assessed value of the improvments over the value of the use and, occupation, and if the said plaintiff, or his legal representatives, shall neglect for the term of one year, to pay the excess in value of said improvements, and the said defendant or his legal representatives, shall, within six months after the expiration of said year, pay to the clerk of the court, for said plaintiff, the value of the lands or tenements as assessed by the jury, then the plaintiff shall be forever barred of his writ of possession and from forever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit; and if the defendant, or his legal representatives shall not within the said six months, avail him or themselves of the benefit of this act, the plaintiff or his legal representatives, may sue out a writ of possession as in ordinary cases."

1 Paschal Dig., Art. 5,300–5,301.